

No. 12147

United States
Court of Appeals
for the Ninth Circuit

SECURITY-FIRST NATIONAL BANK OF LOS
ANGELES, a national banking association,
Appellant,

vs.

FRANCIS F. QUITTNER, as Trustee in Bank-
ruptcy of the Estate of Alvera Gordon Jones,
doing business as LeRoy Gordon Beauty Salons,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

FEB 19 1949

PAUL R. O'BRIEN,
CLERK

No. 12147

United States
Court of Appeals
for the Ninth Circuit

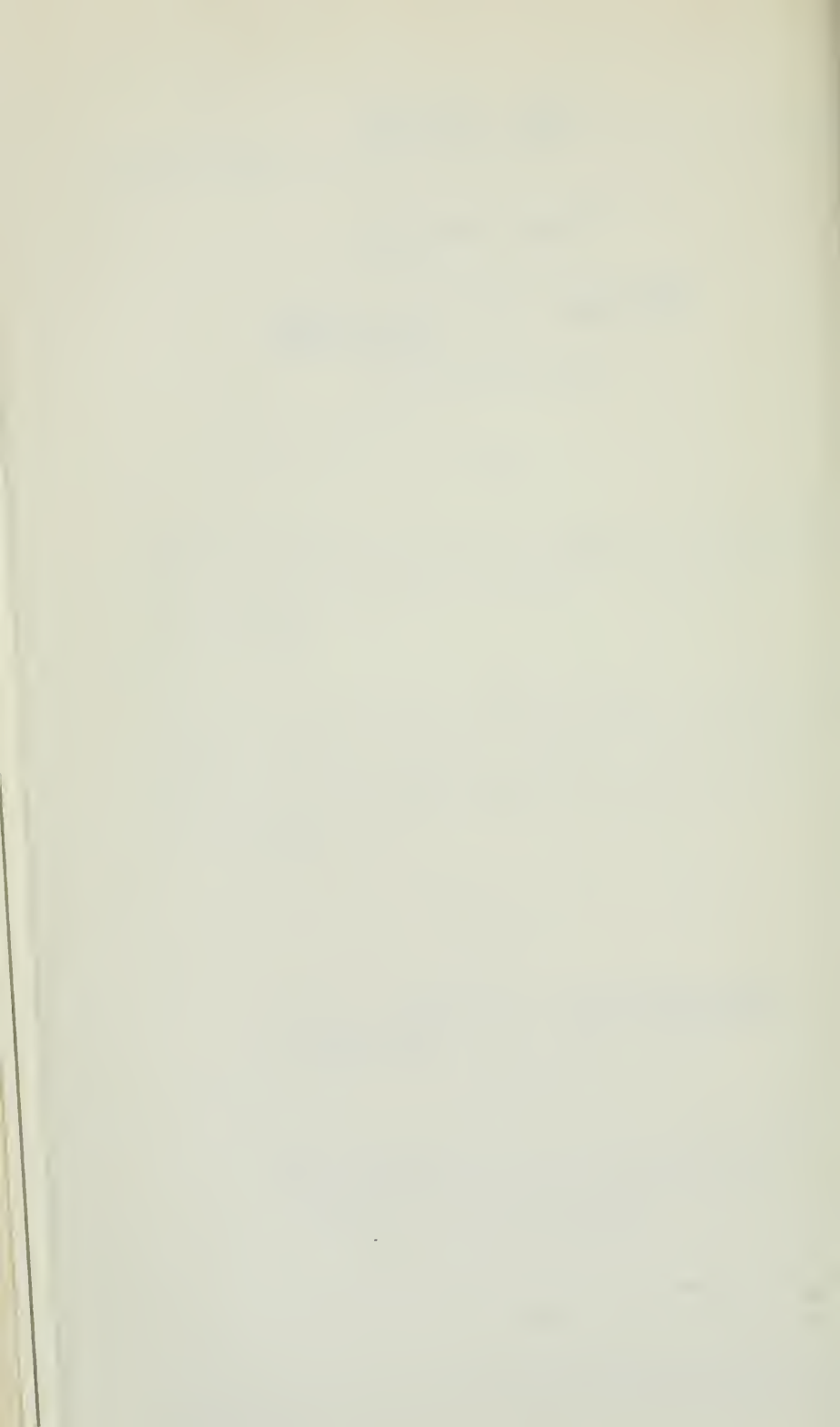
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

ROANE THORPE,
215 West 6th St., Suite 1112,
Los Angeles 14, Calif.

For Appellee:

IRWIN R. BUCHALTER,
RICHARD L. MOSS,
121 5 Bankers Bldg.,
629 S. Hill St.,
Los Angeles 14, Calif. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States, Southern District of California, Central Division

No. 8437-PH

FRANCIS F. QUITTNER, as Trustee in Bankruptcy of the Estate of ALVERA GORDON JONES, Doing Business as LEROY GORDON BEAUTY SALONS,

Plaintiff,

vs.

SECURITY FIRST NATIONAL BANK OF LOS ANGELES, a California Banking Corporation,
Defendant.

COMPLAINT TO RECOVER PREFERENCE

Plaintiff complains of the defendant and alleges:

I.

That this action arises under the Act of Congress relating to bankruptcy as hereinafter more fully appears; that on the 5th day of March, 1948, an involuntary petition in bankruptcy was filed in this Court against Alvera Gordon Jones, doing business as Leroy Gordon Beauty Salons, hereinafter called the bankrupt, upon which an adjudication of bankruptcy was duly entered herein; that thereafter the plaintiff was duly appointed the trustee of the Estate of said bankrupt and duly qualified and is still acting as such.

II.

That the plaintiff brings this suit under the authority of Section 60 of the Bankruptcy Act, for the

purpose of avoiding [2] preferential interests, the particulars of which are hereinafter set forth.

III.

That prior to the commencement of this action, leave of Court was obtained to institute this action.

IV.

That heretofore and on or about the 2nd day of December, 1947, the 18th day of December, 1947, the 23rd day of January, 1948, all of said dates being within four months before the filing of said Petition in bankruptcy, the bankrupt paid and transferred to the defendant sums totaling sixteen hundred and fifty dollars (\$1650.00).

V.

That said payments and transfers were made for and on account of an antecedent debt owed by the bankrupt.

VI.

That said payments or transfers were made or suffered by the bankrupt while insolvent.

VII.

That the effect of said payments or transfers was to enable the defendant to obtain a greater percentage of its debt than other creditors of the same class.

VIII.

That at the time of the transfers or payments of the defendant of the sums hereinbefore mentioned, and at the time of the receipt thereof by the defendant, the defendant had reasonable cause to be-

lieve that the bankrupt was insolvent and that said transfers would effect a preference.

IX.

That prior to the commencement of this action, plaintiff demanded of defendant the return of said sums, which demand has been refused; that the sums which were received by the said [3] defendant by means of the above described transfers constitute property belonging to plaintiff trustee.

Wherefore, plaintiff prays judgment against defendant in the sum of sixteen hundred and fifty dollars (\$1650.00), with interest thereon from the 2nd day of December, 1947, together with his costs herein, and for such other and further relief as the Court may deem proper.

IRWIN R. BUCHALTER &
RICHARD L. MOSS,

By /s/ IRWIN R. BUCHALTER,
Attorneys for the Trustee.

(Duly Verified.)

[Endorsed]: Filed July 16, 1948. [4]

[Title of District Court and Cause.]

ANSWER

Comes now the Defendant, Security-First National Bank of Los Angeles, a National Banking Association, sued herein as Security First National Bank of Los Angeles, a California banking

corporation, and answering Plaintiff's Complaint herein admits, denies and alleges:

I.

Defendant admits each, every and all of the allegations contained in paragraph I of Plaintiff's Complaint herein; except that Defendant denies that any legal cause of action whatsoever arises in favor of Plaintiff herein and against this Defendant [6] under the Act of Congress relating to bankruptcy, or any other Act of Congress whatsoever, by reason of the matters and things set forth in said Complaint.

II.

Answering paragraph II of Plaintiff's Complaint herein, Defendant denies that Section 60 of the Bankruptcy Act, or any other section of said Bankruptcy Act authorizes any cause of action whatsoever against this Defendant by reason of the matters and things set forth in said Complaint for the purpose of averting preferential interest or otherwise; and further denies that Defendant ever obtained any preferential interest by reason of any matters or things set forth in the Complaint herein.

III.

Defendant admits each, every and all of the allegations of paragraph III of the Complaint herein.

IV.

Defendant admits each, every and all of the allegations contained in paragraph IV of Plaintiff's Complaint herein.

V.

Defendant admits each, every and all of the allegations contained in paragraph V of Plaintiff's Complaint herein.

VI.

Defendant has not sufficient knowledge, information or belief to enable it to answer paragraph VI of Plaintiff's Complaint herein, and basing its denial on that ground denies generally and specifically each, every and all of the allegations therein contained.

VII.

Defendant has not sufficient knowledge, information or belief to enable it to answer paragraph VII of Plaintiff's Complaint [7] herein, and basing its denial on that ground denies, generally and specifically, each, every and all of the allegations therein contained.

VIII.

Defendant denies generally and specifically each, every and all of the allegations contained in paragraph VIII of Plaintiff's Complaint herein.

IX.

Defendant denies generally and specifically each, every and all of the allegations contained in paragraph IX of Plaintiff's Complaint herein; except that it admits that prior to the commencement of the above-entitled action Plaintiff demanded of Defendant the sum of Sixteen Hundred Fifty and no/100 Dollars (\$1650.00) and that Defendant refused said demand.

Wherefore, Defendant prays that Plaintiff take nothing by reason of his Complaint herein and that Defendant recover judgment for its costs of suit.

/s/ ROANE THORPE,

Attorney for Defendant.

(Acknowledgment of Service.)

(Duly Verified.)

[Endorsed]: Filed Aug. 11, 1948. [8]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause, coming on for trial on the 8th day of November, 1948, and having been tried before the Court, the Honorable Charles C. Cavanah, Judge presiding, the Court sitting without a jury, Irwin R. Buchalter and Richard L. Moss, Esqs., appearing as counsel for the plaintiff, and Roane Thorpe, Esq., appearing as counsel for the defendant, and after hearing the allegations and proofs of the parties, the arguments of counsel, and being fully advised in the premises, the following findings of fact and conclusions of law constituting the decision of the Court in said action are hereby made:

FINDINGS OF FACT

I.

That an involuntary petition in bankruptcy was filed in [11] this Court on the 5th day of March,

1948, against Alvera Gordon Jones, doing business as LeRoy Gordon Beauty Salons, hereinafter called the bankrupt, upon which an adjudication was duly entered herein.

II.

That thereafter the plaintiff, Francis F. Quittner, was duly appointed the trustee of the estate of said bankrupt, and duly qualified and is now acting as such trustee.

III.

That prior to the commencement of this action, the plaintiff obtained leave of Court to institute this action.

IV.

That on or about the 2nd day of December, 1947, the 18th day of December, 1947, and the 23rd day of January, 1948, the bankrupt paid and transferred to the defendant, Security First National Bank of Los Angeles, property consisting of sums of money totaling Sixteen Hundred and Fifty Dollars (\$1650.00).

V.

That said Sixteen Hundred and Fifty Dollars (\$1650.00) was paid or transferred by said bankrupt to said defendant within four months before the filing of said petition in bankruptcy on the 5th day of March, 1948.

VI.

That said payments or transfers were made to said defendant for and on account of a debt owed by the bankrupt to said defendant; to wit, a loan made by the defendant to the bankrupt on or about

the 6th day of January, 1947, said loan being evidenced by a promissory note.

VII.

That said payments or transfers were made by the bankrupt to said defendant in full and complete payment of her indebtedness to said defendant. [12]

VIII.

That other creditors of the bankrupt, of the same class as said defendant, did not receive payment of their claims.

IX.

That prior to and at the time of the payments or transfers, said defendant was in possession of such facts concerning the bankrupt's business as would give it reasonable cause to believe that the said bankrupt was insolvent.

X.

That at the time said payments or transfers were made or suffered by the bankrupt, the fair valuation of the aggregate of her property was not sufficient in amount to pay her debts.

XI.

That prior to the commencement of this action, the plaintiff demanded of defendant the return of said sum of Sixteen⁰⁰ Hundred and Fifty Dollars (\$1650.00) and that said demand was refused by said defendant.

XII.

That each and all of the denials and allegations set forth in defendant's answer to plaintiff's complaint herein which are inconsistent with the findings of fact herein are untrue.

From the foregoing Findings of Fact the Court makes the following:

CONCLUSIONS OF LAW

I.

That the payments or transfers made by Alvera Gordon Jones, doing business as LeRoy Gordon Beauty Salons to the defendant, Security First National Bank, of her property consisting of sums of money totaling Sixteen Hundred Fifty Dollars (\$1650.00), was a transfer of the debtor's property to or for the benefit of the creditor, for or on account of an [13] antecedent debt, made or suffered by such debtor, while insolvent and within four months before the filing against her of the petition in bankruptcy, which payment or transfer constituted a preference within the meaning and scope of Section 60 (a) of the Bankruptcy Statutes of 1938.

II.

That said defendant, Security First National Bank of Los Angeles, had, at the time of said payments or transfers, reasonable cause to believe that Alvera Gordon Jones, doing business as LeRoy Gordon Beauty Salons, was insolvent.

III.

That the plaintiff, Francis F. Quittner, trustee in bankruptcy of the estate of Alvera Gordon Jones, doing business as LeRoy Gordon Beauty Salons, is entitled to recovery of the sum of Sixteen Hundred Fifty Dollars (\$1650.00) from the defendant, Security First National Bank of Los Angeles, together with interest thereon at the rate of

seven per cent (7%) per annum from the date of the commencement of this action, to wit, July 16, 1948, until paid; and costs of suit.

That the order of this Court be entered accordingly.

Dated: This 23rd day of November, 1948.

/s/ CHARLES C. CAVANAH,

District Judge of the United
States.

(Duly Verified.)

(Acknowledgment of Service.)

[Endorsed]: Filed Nov. 23, 1948. [14]

In the District Court of the United States, Southern District of California, Central Division

No. 8437-PH

FRANCIS F. QUITTNER, as Trustee in Bankruptcy of the Estate of ALVERA GORDON JONES, Doing Business as LEROY GORDON BEAUTY SALONS,

Plaintiff,

vs.

SECURITY FIRST NATIONAL BANK OF LOS ANGELES, a California Banking Corporation,
Defendant.

JUDGMENT

This cause came on regularly for trial before the Court, the Honorable Charles C. Cavanah, Judge presiding, the Court sitting without a jury, on the 8th day of November, 1948, Irwin R. Buchalter

and Richard L. Moss, Esqs., appeared as attorneys for the plaintiff and Roane Thorpe, Esq., appeared as attorney for the defendant, and evidence both oral and documentary having been introduced on behalf of the respective parties, and being fully advised in the premises and the Court herein having made its written findings of fact and conclusions of law, and having directed that judgment be entered in accordance therewith;

Now, Therefore, by reason of the law and the findings aforesaid,

It Is Hereby Ordered, Adjudged and Decreed, as follows: [16]

That the plaintiff, Francis F. Quittner, as trustee in bankruptcy of the estate of Alvera Gordon Jones, doing business as LeRoy Gordon Beauty Salons, do have and recover of the defendant, Security First National Bank of Los Angeles, the sum of Sixteen Hundred and Fifty Dollars (\$1650.00), with interest thereon at the rate of seven per cent (7%) from the date of the commencement of this action, to wit, July 16, 1948, until paid; together with costs of suit in the sum of \$23.20.

Dated this 23rd day of November, 1948.

/s/ CHARLES C. CAVANAH,

District Judge of the United
States.

Judgment entered Nov. 23, 1948. Docketed Nov. 23, 1948. Book 54, Page 209.

(Duly Verified.)

(Acknowledgment of Service.)

[Endorsed]: Filed Nov. 23, 1948. [17]

Case No. 8437-PH in

Quittner

vs. Sec First Nat Bk La

Pcfs

1

311-8-48 No. 1

IDENTIFICATION

EVIDENCE

Clerk, U. S. District Court, Dist. of Calif.

L. B. Bigg

Deputy Clerk

ET NO.
Ledge Sheet
COMMERCIAL ACCOUNT
**SECURITY-FIRST NATIONAL
BANK OF LOS ANGELES**

TRY SALON

ANCE	CHECKS	CHECKS	CHECKS	NEW BALANCE
5027 ⁰⁰	76.60 -	748.1 -	582.1 -	
	87.18 -	68.45 -	85.56 -	
	58.67 -	80.60 -	95.50 -	
	69.18 -	116.86 -	121.63 -	
1933 -	133.74 -	76.96 -	65.11 -	
	81.33 -	92.40 -	144.75 -	
	127.95 -	115.00 -	35.80 -	
	1930 -	45.26 -	72.17 -	
	63.47 -	88.66 -	72.31 -	
	92.96 -	69.67 -	97.02 -	
	119.74 -	69.74 -	98.71 -	
	76.97 -	76.10 -	81.18 -	
				OCT 147 2,319.5
				OCT 247 4,059
582 -	1350 ^{LST}	1250 ^{LST}	80.00 -	
	40.00 -	96.42 -	87.52 -	
	40.20 -	43.57 -	64.91 -	
	35.80 -	77.59 -	76.60 -	
	64.31 -	89.13 -	107.35 -	
042 -	111.20 -			
				OCT 347 5,100.4
545 -				
				1,150.60
				4543.7 OCT 347 3,495.4
				4243.5
				9016 OCT 447 2,980.9
094 -	600 ^{LST}	100 ^{LST}	83.47 -	
	89.80 -	96.82 -	74.02 -	
570 =	124.65 -			
	5.00 -	2.50 -		
				OCT 447 3,456.7
6107 -				
6177 -				
				128.83
				1,371.30 OCT 747 1,964.0
				3173.0 OCT 847 1,646.7
2106 -	1.50 -	1.50 -		
2386 -				
522	32.58 -	15.42 -	41.49 -	
	4.57 -			
	6.56 -			
				522.71 OCT 947 1,124.06
				338.20 OCT 1047 788.86
				895.08 OCT 1147 1062.2
				OCT 1147
				OCT 1147 5.60



PLAINTIFF'S EXHIBIT No. 2

(Admitted in Evidence 11/8/48)

Neilson & Ellis

Accountants & Auditors.

523 West Sixth Street

Los Angeles 14, Calif.

September 8, 1947.

Mrs. Alvera Gordon Jones
LeRoy Gordon Beauty Salons
514 No. La Brea Avenue
Los Angeles 36, California

Dear Mrs. Jones:

In compliance with your request, we have installed a new system of accounting for your 16 Beauty Salons, Warehouse and Main Office. This system went into effect as of July 1, 1947. The installation of this new system will disclose for you the operating results of each store. It is our recommendation that monthly operating statements be prepared, also a Statement of Assets & Liabilities.

The books and records kept prior to this date were brought into balance as of June 30, 1947. A Trial Balance had been developed by the ex-office manager, Mr. Edward Ellis, as of April 30, 1947. We did not make an audit of the records prior to April, 1947. Accounts for May, June, July and August have been recorded by us or by persons under our supervision.

The Income and Expense accounts appear to be reasonably consistent since your taking over these stores as of July 1, 1946.

We have reconciled the Bank Statement on the

individual stores as of July 31, 1947. As of August 31st the amount totalled \$70.83. These funds are left in the 16 separate banks to cover miscellaneous bank charges, etc.

The Petty Cash Fund is shown in the amount actually counted.

The Merchandise & Supply Inventory was taken by the manager and one assistant at each store, each signing for the accuracy of the count. A letter of instruction had been sent to each manager giving adequate and complete instructions on taking the inventories. A copy of this letter is enclosed for noting. Also enclosed is a summary of inventory amounts by stores which reflect a consistent amount in the various locations. There were two exceptions—where the manager only, signed. The warehouse inventory was taken by the warehouseman and one assistant. Pricing and extension was done in the Main Office by your employees. We test checked these prices and extensions to the extent we deemed appropriate and found them in order.

Furniture & Fixtures values and their respective depreciation reserve have been taken from the books.

Leaseholds, Leasehold Improvements and their respective reserves were set up by the writers.

The Deposit for Compensation Insurance was determined by reference to the policies on hand.

Prepaid Rents were supported by a subsidiary ledger on this subject. We saw no reason to doubt its accuracy.

Prepaid Insurance was set up by the writers based upon information obtained from the policies on hand. [20]

Prepaid Dues & Subscriptions cover magazines, the liability for which has been set up. These subscriptions run into the future for one, two and three years.

The account of "Suspense—Employees & Ex-employees" represents charges for cash paid out, the disposition of which you are to determine as soon as practicable.

The Bank Account for the Main Office has been reconciled as of August 31, 1947, reflecting an overdraft of \$3,217.52.

The Notes Payable is due the Security First National Bank at Highland and Melrose Avenue, Hollywood.

An extensive effort has been made to determine the extent of the liability of Accounts Payable. All bills found have been recorded and are reflected in the statements. We are advised that adjustments are due on some of these payables in the approximate amount of \$1,100.00. These cover such claims as returned merchandise, etc. From a conservative standpoint, we have not effected such adjustments on the records until documentary evidence is furnished to support the reduction of the liability. A schedule of Accounts Payable is enclosed.

The Contracts Payable cover amounts due as follows:

Hazel Dilworth—balance due on purchase of location in Ontario.	\$2,000.00
Hall Co.—Insurance Policies....	879.00
<hr/>	
Total	\$2,879.40

As of August 31, 1947, there were Accrued Salaries due for one week, namely, 8-26-47 to 8-31-47. The liability has been set up on an estimated basis—using $\frac{1}{4}$ of the four preceding week's actual salary costs.

The following Tax Accounts represent the liability due as reflected by the records:

Accrued — State Unemployment Insurance	\$1,010.67
Social Security Tax.....	545.96
Payroll Excise Tax.....	354.12
Cosmetics Excise Tax.....	55.62
Sales Tax.....	24.71
Withholding Tax.....	3,299.85

The Statement of Income & Expense shows an operating profit of \$6,118.21. As previously stated, a detailed audit of the accounts was not made prior to May, 1947. The Profit thus developed represents results as reflected by the books and records and the consideration of the Balance Sheets items as determined on August 31, 1947.

We appreciate the opportunity of being of service to you.

Yours very truly,

NEILSON & ELLIS,
By AUSTIN H. ELLIS,
Partner. [21]

LeRoy Gordon Beauty Salons

MERCHANDISE & SUPPLIES INVENTORY

August 31, 1947

	Merchandise		Supplies	Total
Store No. 1.....	149.32	799.62		948.94
Store No. 2.....	152.04	1,081.42		1,233.46
Store No. 3.....	103.30	735.41		838.71
Store No. 4.....	412.64	334.30		746.94
Store No. 5.....	61.73	750.92		812.65
Store No. 6.....	336.09	433.67		769.76
Store No. 7.....	762.57	564.01		1,326.58
Store No. 8.....	637.50	848.44		1,485.94
Store No. 9.....	127.61	551.64		679.25
Store No. 10.....	166.04	642.63		808.67
Store No. 11.....	121.91	615.64		737.55
Store No. 12.....	627.99	450.06		1,078.05
Store No. 13.....	191.55	752.59		944.14
Store No. 14.....	309.30	724.06		1,033.36
Store No. 15.....	143.34	609.13		752.47
Store No. 16.....	281.61	885.74		1,167.35
	<hr/>	<hr/>		<hr/>
	4,584.54	10,779.28		15,363.82
Warehouse	2,333.73	13,589.53		15,923.26
	<hr/>	<hr/>		<hr/>
	6,918.27	24,368.81		31,287.08

LEROY GORDON BEAUTY SALONS

STATEMENT OF ASSETS AND LIABILITIES
AS OF AUGUST 31, 1947

ASSETS

Current:

Change Fund at Stores.....	\$	115.00	
Cash in Branch Banks.....		70.83	
Petty Cash Fund		1.82	
Inventory—Merchandise	\$	6,918.27	
Supplies	24,368.81	31,287.08	\$31,474.73

Fixed:

Furniture and Fixtures.....	\$16,721.03		
Less Depreciation Reserve	2,600.90	\$14,120.13	
Leaseholds	\$ 5,675.00		
Less Reserve Leasehold			
Amortization	515.92	5,159.08	
Leasehold Improvements	\$ 2,583.54		
Less Depr. Res. Leasehold			
Improvements	129.18	2,454.36	
Deposits—Utilities		32.50	
Compensation Insurance		200.00	21,966.07

Deferred Charges:

Prepaid Rent	\$ 1,840.00		
Prepaid Insurance	1,076.67		
Prepaid Dues and Subscriptions.....	449.00	3,365.67	

Other Assets:

Suspense—Employees and Ex-employees Accounts.....	2,223.75		
---	----------	--	--

Total Assets.....\$59,030.22

LIABILITIES

Current:

Bank Overdraft	\$ 3,217.52
Notes Payable—Bank	2,000.00
Accounts Payable	22,805.18
Contracts Payable	2,879.40
Accrued Salaries—Estimated	3,386.84
Accrued State Unemployment Ins.....	1,010.67
Accrued Social Security Tax.....	545.96
Accrued Payroll Excise Tax.....	354.12
Accrued Cosmetic Excise Tax.....	55.62
Accrued Sales Tax	24.71
Accrued Withholding Tax	3,299.85

Total Liabilities.....\$39,579.87

Capital:

Alvera Gordon Jones 1-1-47.....	\$12,565.68
1947 Contributions	4,500.00
Earnings 1-1-47 thru 8-31-47.....	6,118.31

\$23,183.99

Less Drawings

3,733.64

Balance 8-31-47\$19,450.35

Total Liabilities and Net Worth.....\$59,030.22

See comments in accompanying letter.

LeRoy Gordon Beauty Salons

STATEMENT OF INCOME & EXPENSE

Period January 1 Thru August 31, 1947

Sales		181,210.83
Less Cost of Merchandise & Supplies sold and con- sumed:		
Inventory 1-1-47.....	12,780.47	
Purchases	19,410.35	
	<hr/>	
	32,190.82	
Inventory 8-31-47.....	31,287.08	903.74
	<hr/>	<hr/>
Balance		180,307.09
Expenses:		
Advertising	8,398.29	
Auto Expense.....	297.36	
Depreciation	1,681.38	
Donations	68.00	
Freight In.....	90.45	
Insurance	920.52	
Interest	59.00	
Laundry	2,913.79	
Leasehold Amortization...	515.92	
Miscellaneous Expense....	4,000.81	
Over-short Cash.....	4.23	
Payroll Taxes.....	4,725.98	
Printing & Office Supplies.	602.70	
Professional Services.....	364.50	

Rent	20,282.59	
Repairs & Maintenance...	2,832.71	
Salaries	120,287.24	
Shipping	1,029.84	
Supplies	248.10	
Taxes	598.36	
Telephone	1,564.96	
Theft	20.75	
Travelling	1,304.06	
Union Dues.....	37.50	
Utilities	3,173.30	
Total Expenses.....		176,022.34
Balance		4,284.75
Add Other Income:		
Rents Collected.....	1,712.00	
Miscellaneous Income.....	121.56	1,833.56
Net Profit		6,118.31*

*See Comments in Accompanying Letter.

SUMMARY OF DEBTS AND ASSETS

(From the Statements of the Debtor in Schedules A and B)

Sched. A-1—a	Wages	\$	0.00
Sched. A-1—b (1)	Taxes due United States.....		10,568.98
Sched. A-1—b (2)	Taxes due State of California.....		3,209.13
Sched. A-1—b (3)	Taxes due counties, districts and municipalities		0.00

Sched. A-1—c (1)	Debts due any person, including the United States, having priority by laws of the United States.....	0.00
Sched. A-1—c (2)	Rent having priority—See Assignee's Report	0.00
Sched. A-2	Secured claims	0.00
Sched. A-3	Unsecured claims	22,664.25
Sched. A-4	Notes and bills which ought to be paid by other parties thereto.....	2,000.00
Sched. A-5	Accommodation paper	0.00
Schedule A, total.....		\$38,442.36
Sched. B-1	Real estate	\$ 6,691.86
Sched. B-2—a	Cash on hand	0.00
Sched. B-2—b	Negotiable and non-negotiable instruments and securities	0.00
Sched. B-2—c	Stocks in trade—See Assignee's Report	0.00
Sched. B-2—d	Household goods	1,500.00
Sched. B-2—e	Books, prints and pictures.....	0.00
Sched. B-2—f	Horses, cows and other animals.....	0.00
Sched. B-2—g	Automobiles and other vehicles.....	1,000.00
Sched. B-2—h	Farming stock and implements.....	0.00
Sched. B-2—i	Shipping and shares in vessels.....	0.00
Sched. B-2—j	Machinery, fixtures and tools.....	0.00
Sched. B-2—k	Patents, copyrights, and trade-marks.....	0.00
Sched. B-2—l	Other personal property	0.00
Sched. B-3—a	Debts due on open accounts.....	0.00
Sched. B-3—b	Policies of insurance	275.00
Sched. B-3—c	Unliquidated claims	0.00
Sched. B-3—d	Deposits of money in banks and elsewhere	7.67
Sched. B-4	Property in reversion, remainder, expectancy or trust, etc.....	0.00
Sched. B-5	Property claimed as exempt (\$9,106.80)	
Sched. B-6	Books, deeds and papers	0.00
Schedule B, total.....		\$ 9,474.47

/s/ ALVERA GORDON JONES,
Petitioner.

[Title of District Court and Cause.]

APPOINTMENT, OATH AND REPORT OF
APPRAISERS

It is ordered that John O'B. Bodkin of Los Angeles and a disinterested person be, and he is hereby appointed appraiser at a compensation not to exceed \$12.50 per day, to appraise the real and personal property belonging to the estate of the said Bankrupt set out in the schedules now on file in this Court, and report his appraisal to the Court, said appraisals to be made as soon as may be, and the appraiser be duly sworn.

Witness my hand this 18th day of March, A.D. 1948.

/s/ [Illegible.]

Referee in Bankruptcy.

Southern District of California—ss:

Personally appeared the within named Appraiser and made oath that he will fully and fairly appraise the aforesaid real and personal property according to his best skill and judgment.

/s/ JOHN O'B. BODKIN,
Appraiser.

Subscribed and sworn to before me this 18th day of March, A.D. 1948.

[Seal]

/s/ FLORENCE ROBINSON,
Notary Public. [26]

I, the undersigned, having been notified that I was appointed to estimate and appraise the real personal property aforesaid, have attended to the duties assigned me, and after strict examination and careful inquiry we do estimate and appraise the same as follows:

Beauty shops located at:

117 West Fifth Street, Long Beach, California.....	\$ 685.00
413 Santa Monica Blvd., Santa Monica, California.....	800.00
1729 Nineteenth Street, Bakersfield, California.....	400.00
62 South Los Robles, Pasadena, California.....	1,000.00
720 Fourth Street, Santa Rosa, California.....	550.00
206 Fulton-Fresno Bldg., Fresno, California	400.00
6 North Garfield, Alhambra, California	485.00
953 West Manchester, Los Angeles, California.....	600.00
5441 Crenshaw Blvd., Los Angeles, California.....	625.00

Inventory in warehouse located at 514 North La Brea Ave., Los Angeles, Cal.:

\$7,022.25	\$ 3,700.00
Beverly Hills Shop—Equipment and Supplies at 514 No. La Brae	685.00

Total.....\$ 9,930.00

6 days J. O'B. B. Auto Expense—142 miles.

In Witness whereof, I hereunto set my hand at Los Angeles, California, this 27th day of March, A.D. 1948.

/s/ JOHN O'B. BODKIN,
Appraiser.

[Endorsed]: Filed March 27, 1948. [27]

[Title of District Court and Cause.]

ORDER CONFIRMING SALE

The Receiver herein, Francis F. Quittner, having filed his duly verified Return of Sale wherein it appears that under and pursuant to an Order of Sale of the Court herein he sold all right, title and interest of the bankrupt estate in and to the following described property, to wit:

Beauty parlors at the following locations:

117 West Fifth Street, Long Beach, California.

413 Santa Monica Blvd., Santa Monica, California.

1729 Nineteenth Street, Bakersfield, California.

62 South Los Robles, Pasadena, California.

720 Fourth Street, Santa Rosa, California.

206 Fulton-Fresno Building, Fresno, California.

6 North Garfield, Alhambra, California.

953 West Manchester, Los Angeles, California.

5441 Crenshaw Blvd., Los Angeles, California.

subject to the terms and conditions of occupancy as announced at the time of sale.

Inventory of merchandise and fixtures at 514 North La Brea Avenue, Los Angeles, California, including inventory of Beverly Hills shop which was moved into the warehouse.

Equity in Remington Rand 11" typewriter, number J-1084757, subject to balance due in the sum of \$112.26 in favor of Remington Rand, Inc., 41 First Street, San Francisco, California. [29]

To Michael M. Weisz for the sum of \$5100.00, and it further appearing that said purchaser was the highest and best bidder for said property, and

that said sum was the highest and best bid received therefor, and that the same constitutes the fair value thereof, and it also appearing satisfactorily to the Court that it is to the best interests of said estate that said sale be confirmed, now, therefore, no adverse interests appearing:

It Is Ordered that the Receiver's sale hereinabove mentioned be, and the same is hereby confirmed, and said Receiver is hereby authorized and directed to deliver over said property to said purchaser upon receipt of the purchase price thereof.

Dated: This 1st day of April, 1948.

/s/ [Illegible.]

Referee in Bankruptcy.

[Endorsed]: Filed April 1, 1948. [28]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Security-First National Bank of Los Angeles, a National Banking Association, Defendant in the above-entitled action, does hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment, and the whole thereof, entered in this action in Civil Order Book No. 54, Page 209, on the 23rd day of November, 1948, in favor of Plaintiff herein and against Defendant herein.

Dated: December 2, 1948.

ROANE THORPE,

Attorney for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 2, 1948. [30]

[Title of District Court and Cause.]

NOTICE DESIGNATING EVIDENCE AND
RECORDS TO BE CONTAINED IN REC-
ORD ON APPEAL

Notice Is Hereby Given by Defendant and Appellant herein, Security-First National Bank of Los Angeles, a National Banking Association, that it does hereby designate the following evidence and records in the above-entitled action to be contained and included in the record on appeal herein:

1. Complaint.
2. Answer.
3. Findings of Fact and Conclusions of Law.
4. Judgment.
5. Complete transcript of the oral evidence, but [31] not including the arguments of counsel at end of trial.
6. Complete transcript of Plaintiff's Exhibit No. 2.

Dated: December 2, 1948.

ROANE THORPE,

Attorney for Defendant and
Appellant.

[Acknowledgment of Service.)

[Endorsed]: Filed Dec. 2, 1948. [32]

[Title of District Court and Cause.]

NOTICE DESIGNATING EVIDENCE AND
RECORDS TO BE CONTAINED IN REC-
ORD ON APPEAL

Notice Is Hereby Given by plaintiff and respondent herein, Francis F. Quittner, that he hereby requests that the following evidence and records in the above-entitled action be contained and included in the record on appeal herein:

1. Complete transcript of plaintiff's Exhibit No. 1.

2. Complete transcripts of the following documents contained in the bankruptcy file No. 45,-769-W and entitled, In the Matter of Alvera Gordon Jones, doing business as LeRoy Gordon Beauty Salons, bankrupt.

(a) Summary of debts and assets of the bankrupt.

(b) Order confirming sale of bankrupt's assets.

(c) Appointment and oath of appraiser. [34]

(d) Report of appraiser, John O. Bodkin.

Dated: December 7th, 1948.

IRWIN R. BUCHALTER and
RICHARD L. MOSS,

By /s/ RICHARD L. MOSS.

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 8, 1948. [35]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 36, inclusive, contain full, true and correct copies of Complaint to Recover Preference; Answer; Findings of Fact and Conclusions of Law; Judgment; Plaintiff's Exhibits Nos. 1 and 2; Summary of Debts and Assets, Appointment, Oath and Report of Appraisers and Order Confirming Sale in Bankruptcy Case No. 45769-W; Notice of Appeal; and Appellant's and Appellee's Designations of Record on Appeal which, together with one volume of reporter's transcript of proceedings on November 8, 1948, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$9.80 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 7th day of January, A.D. 1949.

[Seal]

EDMUND L. SMITH,
Clerk.

In the District Court of the United States in and
for the Southern District of California, Central
Division

Honorable Charles C. Cavanah, judge presiding.

No. 8437-PH

FRANCIS F. QUITTNER, as Trustee in Bankruptcy of the Estate of Alvera Gordon Jones, Doing Business as LeRoy Gordon Beauty Salons,

Plaintiff,

vs.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a California Banking Corporation, Defendant.

TRANSCRIPT OF TESTIMONY

Los Angeles, California

Monday, November 8, 1948

Appearances: For the Plaintiff: Irwin R. Buchalter and Richard L. Moss, 1215 Bankers Building, Los Angeles, California. For the Defendant: Roane Thorpe, 1112 Pacific Southwest Bldg., Los Angeles, California. [1*]

(Case called by clerk.)

Mr. Thorpe: Ready.

Mr. Buchalter: Ready. If the court please, the bankrupt has been subpoenaed. I don't see her but I suppose she will be here very shortly. However, I suppose I could go ahead and call another witness.

The Court: Certainly. We can't wait for people who are coming.

Mr. Buchalter: Is Mr. Duval in court?

Mr. Thorpe: Mr. Duval is in court.

The Court: What is this case about?

Mr. Buchalter: This case is one filed by the Trustee in Bankruptcy, against the Security Bank, for the purpose of recovering a preference. It concerns the estate of Alvera Gordon Jones who has been adjudicated a bankrupt by the bankruptcy court of this Division.

The plaintiff will attempt to prove that the bankrupt had made a loan, in the early part of 1947, from the Security Bank. That loan went on unpaid and was renewed time and time again. Some time in August, 1947, the bankrupt appeared before the branch manager of the bank, a Mr. Duval, and told him she was having extreme difficulty in the payment of that note and that her business was in very poor condition. The [2] note was then again extended upon the condition that she pay \$50 per week. The note was some \$2,000. She paid two payments of \$50 per week and then she again returned to the Bank and told them that she was unable to continue making further payments; that she then wanted an additional loan to help her in her business which, by the way, was a chain of beauty shops. The bank manager told her, if she would submit some figures, after he studied them, he would refer it to the committee downtown, which was done. She came back about a week or so later and Mr. Duval told her that he would be unable, for the bank, to grant her any further loan but they would again renew the old loan for 90 days, on demand, but no later than 90 days.

She then told him again about the difficulties of her business; that she needed money badly; and

he told her he would try to see whether he could get some loan companies to lend her some money, and, as a matter of fact, referred her to some loan companies for that purpose.

She told him also she would try to sell one or two of the stores and would try to pay the bank off. Some time in January, 1948, she sold a store in San Bernardino and received therefor, as part consideration, a cashier's check, from the purchaser, in the amount of \$1450. She took the cashier's check and brought it to the bank and paid off her loan, adding thereto some \$200, some time in January, 1948. [3]

Immediately thereafter she made an assignment for the benefit of creditors and it resulted finally in a bankruptcy petition.

We contend, your Honor, that the bank had knowledge of the insolvency and certainly had reasonable cause to believe that she was insolvent, and that a preference was being given.

That is a brief resume of plaintiff's contentions in the matter.

The Court: Very well. You may proceed.

Mr. Buchalter: We will call Mr. Duval under the provisions of Section 21(j) of the Bankruptcy Act.

ROBERT R. DUVAL,
a witness for the plaintiff under the provisions of Section 21(j) of the Bankruptcy Act, being first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Robert R. Duval.

(Testimony of Robert R. Duval.)

Direct Examination

By Mr. Buchalter:

Q. What is your business or occupation?

A. Banking.

Q. By whom are you employed?

A. The Security-First National Bank.

Q. Were you so employed in January, 1947?

A. I was. [4]

Q. And where?

A. Melrose and Highland Branch.

Q. What was your position there?

A. Manager.

Q. Do you know Alvera Gordon Jones?

A. I do.

Q. Isn't it true, Mr. Duval, that, on January 6, 1947, the bank loaned Alvera Gordon Jones \$2,000?

A. That is correct.

Q. Do you remember the terms of that note?

A. All due in 90 days from the date of the note.

Q. When the 90-day period had expired, had the note been paid? A. No, sir.

Q. When was it renewed, if it was renewed?

A. It was renewed but I can't tell the exact date.

Q. Was it April 30, 1947?

A. That is correct.

Q. For how long was that renewal period?

A. An additional 90 days, I believe.

Q. That would take it to July 30, 1947. Now, can you tell me whether or not anything had been

(Testimony of Robert R. Duval.)

paid between April 30, 1947, and July 30, 1947?

A. I can't tell you for sure.

Q. Do you have any records of the bank here which [5] might refresh your recollection?

A. Yes, sir.

Q. Would you mind getting them or having counsel give them to you? Will you please, Mr. Duval, first, tell us what that card is that you hold in your hand?

A. That is our record of loans made and payments made and any renewals that might have taken place.

Q. That is the bank record, is it not?

A. That is right.

Q. And that is made and kept by the bank?

A. That is correct.

Q. Looking at that card, can you tell me whether or not anything was paid after the renewal, up to July 30, 1947?

A. Nothing was paid up to that time; no, sir.

Q. What was done on that date?

A. The note was again renewed.

Q. For how long? A. For 60 days.

Q. That would take it to September 30th. Was anything paid before September 30th?

A. Nothing was paid.

Q. What was done on that date?

A. Nothing was done at that particular date. It was eventually renewed for an additional—

Q. It wasn't renewed on September 30th, was it? [6] A. No, sir.

(Testimony of Robert R. Duval.)

Q. And it was in default on October 1st?

A. Correct, sir.

Q. On October 22, 1947, there was a payment made? A. Yes, sir.

Q. Of how much? A. \$250.

Q. On October 31st there was an additional payment made, was there not? A. Yes, sir.

Q. How much? A. \$100.

Q. On December 2, 1947, another payment was made? A. Yes, sir.

Q. For how much? A. \$150.

Q. So that left a balance, on December 3, 1947, of \$1,500, is that correct? A. Yes, sir.

Q. On December 6, 1947, what happened?

A. The \$1,500 balance was then renewed.

Q. For how long? A. For 90 days.

Q. Wasn't that a demand note, with a 90-day limit? A. Yes, sir. [7]

Q. When was the next payment made?

A. December 18th, \$50.

Q. Were there any further payments thereafter?

A. No further payments until it was paid in full.

Q. What date was that?

A. January 23, 1948.

Q. \$1,450 was paid? A. Yes, sir.

Q. What about the interest? Was that also paid on January 15th?

A. Interest was paid in advance on the note. At that time we refunded a portion of unearned interest.

(Testimony of Robert R. Duval.)

Q. Have you any idea how much it was?

A. \$9.10.

Q. Mrs. Jones had been a good customer of the bank for some time, had she not?

A. Yes, sir.

Q. Did she give you any financial statements at any time?

A. She showed me one at one time but she never gave me any in all the time I was there.

Q. Do you remember when it was that she showed you this financial statement?

A. It was probably some time in—I am not sure of the date. [8]

Q. Was it before or after you renewed the note on December 6th?

A. I would say it was after.

Q. The bank has no financial statements of any kind in its records?

A. Some early ones; yes, sir.

Q. How early?

(Mr. Thorpe hands a document to the witness.)

A. We have them.

Q. Counsel has handed you a financial statement. Is that the only one that you have during this period from January 6, 1947, to January 23, 1948?

A. We have some even earlier than this. This is the latest one we have in our file.

Q. When was that statement obtained?

A. March 31, 1947.

(Testimony of Robert R. Duval.)

Q. Did you receive any statements after March 31, 1947? A. No, sir.

Q. Did you ever ask her for one?

A. Yes, sir.

Q. What was her reply?

A. That her auditor was making one up.

Q. How often did you discuss the question of a statement with her? [9]

A. I had no occasion to discuss it with her until such time as she asked for additional funds.

Q. In August, 1947, isn't it true she asked for additional funds.

A. I don't recall the exact date she did ask for additional funds?

Q. It was some time during the summer and while the other note was unpaid, isn't that correct? A. That is correct.

Q. Did she give you such a statement?

A. She presented one which she took back with her.

Q. Did you look at it? A. Yes, sir.

Q. From that statement, did she have any net worth, to the best of your recollection?

A. She had a net worth; yes, sir.

Q. Do you have any idea how much it was?

A. I am sorry, I can't recall the figures.

Q. On April 30, 1947, when the note first became due, did you have a conversation with her with reference to the payment thereof?

A. The note was originally made on April 30, 1947.

(Testimony of Robert R. Duval.)

Q. Wasn't the note made January 6, 1947?

A. Not according to my records. I was not manager there at that time. [10]

Q. On direct examination, I think our records indicate that the original note was made January 6, 1947, and was renewed on April 30, 1947. Do you know whether or not that is correct or not?

A. I do not know.

Q. On July 30, 1947, when the note became due, did you have a conversation with her?

A. Yes, sir.

Q. Where did that conversation take place?

A. In the branch.

Q. In the branch bank? A. Yes, sir.

Q. What was the discussion with reference to the payment of that particular note?

A. She requested an additional time in which to pay it off.

Q. What did she say?

A. That she had taxes and so forth that she wanted to meet at that time, and requested that we grant her additional time.

Q. Did she tell you what kind of taxes would be due on July 30, 1947, or did you ask her what payments were payable at that time?

A. I believe that was the property taxes. I can't recall definitely. [11]

Q. Do you know of any taxes particularly due at that time of the year?

A. It could be delinquent real estate taxes or personal property taxes.

(Testimony of Robert R. Duval.)

Q. Did you have any further conversation with her on September 30th, which was the date to which the note had been renewed? A. Yes, sir.

Q. And can you tell us what was said at that time about the payment of the note?

A. I can't recall.

Q. Isn't it true, Mr. Duval, that, on many occasions, you had requested information or payment from her?

A. When the note was due; yes, sir.

Q. And, around the 30th day of September, 1947, isn't it also true that the bank asked her for payment again or you asked her for payment again and she told you she didn't have the money?

A. I don't recall what she said but we definitely would ask for payment inasmuch as the loan was due.

Q. You didn't renew the note, as you testified, at the end of September and let it remain in default until it was renewed on December 6th. Between September 30th and December 6, 1947, you had a number of conversations with her, did you not? [12]

A. Yes, sir.

Q. In one of those conversations, isn't it true that she came to you for more money?

A. Yes, sir.

Q. And that is when she submitted the figures to you? A. Yes, sir.

(Testimony of Robert R. Duval.)

Q. Isn't it also true that you said you couldn't give her a loan, but, however, you would submit it to the committee downtown?

A. Not exactly that, sir.

Q. All right. Tell us what took place.

A. I informed her I couldn't make the loan and she requested or asked me who she could talk to at our downtown offices, inasmuch as she thought she deserved at least the right to talk to someone down there and find out what our exact position was on it.

Q. What did you tell her?

A. I gave her the name of one of the officers downtown and suggested she go down and talk to him; that he would be the one to discuss the matter with her.

Q. Do you know whether she went downtown?

A. She did.

Q. And do you know what the result of that conference was? A. Yes, sir. [13]

Q. What did they tell her?

A. That we would not be in a position to grant her an additional loan inasmuch as the one we had now was due and we felt we should first be paid off before we considered additional loans, and at the same time gave her the names of some outside loan companies whom we thought would probably be interested in such a deal.

Q. During the time that we have just mentioned, October, November and the early part of December, did you have a conversation with her, in which you

(Testimony of Robert R. Duval.)

told her that your best advice to her would be to sell off some of her beauty stores?

A. Yes, sir.

Q. And didn't you tell her that, in your opinion, she was in very bad financial condition and that would be the only way she could pay the bank and straighten herself out?

A. I don't know that those are the exact words but I did suggest she try to dispose of some of her outlying stores in order to get in a better position.

Q. You mentioned that you did send her to some loan companies?

A. I believe I suggested some; yes, sir.

Q. Mr. Duval, isn't it also true that about that time you were informed by her that she was heavily indebted, in many thousands of dollars, to the United States Government for withholding Social Security and taxes? [14]

A. No, sir.

Q. Did you know it at any time?

A. No, sir.

Q. Take a look at that statement of March 31 that you have in front of you. I call your attention to an item called "Accrued Taxes Payable." Will you tell us how much that amount is?

A. \$7352.

Q. Did you ever have any discussion with Mrs. Jones, after March 31st, in which you asked her whether or not that liability had been reduced?

A. No, sir.

Q. Did she ever tell you that that tax item was in excess of \$12,000 in August, September or October?

A. No, sir.

(Testimony of Robert R. Duval.)

Q. Was there any further discussion of any kind with reference to taxes due to the United States Government? A. No, sir.

Q. Or to the State of California?

A. No, sir.

Q. You kept an eye on her account, didn't you, the checking account? A. Yes, sir.

Q. During this entire period, she was overdrawn many times, was she not? [15]

A. A number of times; yes, sir.

Q. On some occasions, the bank honored the overdrafts, did it not? A. Yes, sir.

Q. On many occasions, the bank returned the checks marked "Insufficient Funds," or however the bank marks them? A. Very few times.

Q. In many cases, you paid them?

A. Yes, sir.

Q. Have you any idea how much the overdraft was at various stages?

A. Oh, various amounts.

(Mr. Thorpe hands some papers to the witness.)

Q. In November, 1947, the records of the bankrupt show an overdraft of \$1774. Does that coincide with the records of the bank? A. No, sir.

Q. Will you tell us what it would indicate?

A. It indicates no overdrafts of any kind in November, 1947.

Q. What about October, 1947? Or let me withdraw that question. You have here a ledger sheet of the Security-First National Bank of Los An-

(Testimony of Robert R. Duval.)

geles, of the Leroy Gordon Beauty Salons, a commercial account. This, I assume, is the bank's record of deposits and withdrawals made by the Leroy [16] Gordon Beauty Salons, is it not?

A. That is correct.

Q. And the Leroy Gordon Beauty Salons is Alvera Gordon Jones? A. Yes, sir.

Mr. Buchalter: We would like to offer the entire record into evidence, of course, with the stipulation, Mr. Thorpe, that you can substitute a photostat copy.

Mr. Thorpe: I was just wondering how we can get a photostat copy. Can you read it into the record, what figures you want?

Mr. Buchalter: I imagine we can.

The Witness: That is a part of our records.

Q. (By Mr. Buchalter): Mr. Duval, I think we will have to have the record. I will tell you what I can suggest. You can take it out with you and then photostat and file the photostat later, if it meets with your Honor's approval.

The Court: It will have to be under the control of the Clerk if you introduce it in evidence.

The Witness: These are permanent records.

Mr. Buchalter: All right. We can read it in. Is there any way, Mr. Clerk, that we can get photostats here of this sheet?

The Clerk: If they wish to pay the Clerk's charge for photostating, the Clerk will photostat them in the office. [17]

Mr. Buchalter: We will be very happy to do it.

The Clerk: I believe it is 25 cents a page.

(Testimony of Robert R. Duval.)

Mr. Buchalter: May we offer this in evidence as Plaintiff's exhibit first in order?

Mr. Thorpe: I would like to object to the introduction of it, if the court please, on the ground it is incompetent, irrelevant and immaterial. Counsel hasn't stated the purpose for which he wishes it introduced. That sheet shows some overdrafts on the account, apparently. I don't apprehend that that will establish the point that you wish to establish, counsel.

Mr. Buchalter: If the court please, the law is very well settled that, where a bank has, over a period of time, especially when a note is in default, distinct evidence that the account is overdrawn, that is knowledge or at least reasonable cause to believe the fact that the debtor is insolvent. And, if counsel would like a case, we have one exactly in point.

Mr. Thorpe: If the court please, there is being introduced here an isolated sheet which doesn't show the four figure balances of the account both before and after that particular sheet. We submit that, if that part of it should be introduced, then the rest of the account should be introduced to show what the situation is. It is like taking an isolated page out of a book and quoting from that page and [18] saying that the page is all that there is.

The Court: It may be received as far as it goes. Overruled. It may be admitted.

The Clerk: Plaintiff's Exhibit 1 in evidence.

(Testimony of Robert R. Duval.)

[Printer's Note]: Plaintiff's Exhibit No. 1 is set out in full at page 13 of this printed Record.

Q. (By Mr. Buchalter): Mr. Duval, I show you Plaintiff's Exhibit 1. Isn't it true that the account of the bankrupt, on October 1, 1947, which is a date after which the note was now in default, was overdrawn \$2319.33? A. That is correct.

Q. And, on October 2nd, the account was overdrawn \$4,059.82? A. Yes, sir.

Q. And then the peak for the month of October was October 3, 1947, which shows an overdraft of \$5,100.42? A. Yes, sir.

Q. From there on down, until October 11, 1947, there is a constant overdraft, winding up on the 10th of October, 1947, with only \$788.86 overdrawn?

A. Yes, sir.

Q. And October 11th is the first credit balance to the depositor, of \$106.22, is that correct?

A. Yes, sir.

Q. On October 14, 1947, the account was then again overdrawn some \$393.33?

A. Yes, sir. [19]

Q. The rest of the month there was a credit balance to the depositor's credit, was there not?

A. Yes, sir.

Q. Do you have November? A. Yes, sir.

Q. Does the month of November show any overdraft? A. No, sir.

Q. What about December, that is, up to the 6th of December, when you renewed the note?

A. No, sir.

(Testimony of Robert R. Duval.)

The Court: What was the date the petition in bankruptcy was filed in this matter?

Mr. Buchalter: March 5, 1948.

Q. Do you know, Mr. Duval, whether or not the deposits of all of the beauty stores came into this particular branch?

A. I am not sure. I believe they did.

Q. The Security Bank has branch banks, has it not? A. Yes, sir.

Q. Do you remember a conversation, some time from December, 1947, to January of 1948, in which Mrs. Jones said to you that she was in extreme financial difficulty and that she thought the best way out for her was to go into receivership, and she used the specific word "receivership"?

A. No, sir.

Q. You don't remember that at all? [20]

A. No, sir.

Q. That was in September, 1947, that she mentioned the word "receivership," was it not?

A. No, sir; I don't recall.

Q. As a matter of fact, do you recall any time during this one-year period that she mentioned the word "receivership???" A. No, sir.

Q. As a matter of fact, didn't you say to her it would be very foolish on her part to attempt to go into receivership and that, in your opinion, she should stick it out; that you would help her get a loan somewhere else? A. No, sir.

Q. You didn't make the original loan in January, 1947, did you? A. No, sir.

(Testimony of Robert R. Duval.)

Q. As a matter of fact, that loan was in existence at the time you came into that position?

A. Yes, sir.

Q. You don't know, then, what the consideration was or what the story is about the making of the original loan, do you? A. No, sir.

Q. Did you know that, in the summer of 1947 and in the fall of 1947, she was losing money on these beauty parlors? [21]

A. I had knowledge that, as far as what she informed me, she was probably losing money on a couple of them.

Q. How many stores did she have?

A. My understanding was she had about 16.

Q. And she told you she was losing money in only a couple of them?

A. That is right, sir.

Q. Did she tell you she was making money in the rest of them? A. Yes, sir.

Q. Do you remember this statement at all, that you mentioned a moment ago—in your August conference with her, when she submitted the figures, were they drawn on a document of some kind or were they in rough, on yellow paper? Do you know that at all?

A. It was a regular audit that you would receive from larger companies.

Q. And did you ask her for a copy of it?

A. No, sir.

Q. Did she volunteer to give you one?

A. No, sir.

(Testimony of Robert R. Duval.)

Q. Isn't it true that, pursuant to that statement, there was quite a large deficit?

A. In her statement?

Q. Yes, sir. [22]

A. No, sir. She showed a net worth at that time.

Q. Have you any idea how much it was?

A. No, sir.

Q. Did you ever go to look at the stores or the equipment in any of the stores? A. No, sir.

Q. And you don't know what the condition of that equipment was, do you?

A. I do not, sir.

Mr. Buchalter: Nothing further.

Mr. Thorpe: No cross-examination.

The Court: You may be excused.

Mr. Buchalter: I would like to call one witness out of order, your Honor. It is an accountant and I would like to get him out. Have you any objection?

Mr. Thorpe: Not at all.

Mr. Buchalter: Mr. Ellis.

AUSTIN H. ELLIS

a witness for the plaintiff, being first duly sworn was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Austin H. Ellis.

Direct Examination

Q. (By Mr. Buchalter): Mr. Ellis, what is your business or occupation? [23]

A. Public accountant.

(Testimony of Austin H. Ellis.)

Q. And as such did you have any connection with Alvera Gordon Jones as the proprietor of the Leroy Gordon Beauty Salons? A. Yes, sir.

Q. What was your connection?

A. Our connection was bookkeeping and accounting.

Q. And did you do the accounting or bookkeeping for that particular firm? A. That is right.

Q. And were you such, or your firm, in 1947 and the early part of 1948?

A. As I remember, we started there about the 1st of August, started our work.

Q. What year?

A. Of 1947. And I think we prepared the January, 1948, statements.

Mr. Buchalter: Mr. Thorpe, it will be a lot easier if you come over here and look at these records.

Mr. Thorpe: Yes; I will.

Q. (By Mr. Buchalter): Mr. Ellis, I show you the books and records of the bankrupt and pick out a page. Can you tell me what this page is?

A. It is cash in bank, Security National Bank.

Q. Will you tell me the amount of the overdraft, if [24] any, shown on those records, in November, 1947?

A. I take it that you mean November 30th?

Q. That is right.

A. At the end of the month, it was \$1774.

Q. What about December 30th?

A. \$4993.59.

(Testimony of Austin H. Ellis.)

Q. In your capacity in connection with the company, did you prepare any statements for Mrs. Jones? A. We did.

Q. Did you prepare a statement some time in August, 1947?

A. I believe that is the first one we prepared.

Q. Do you have a copy of that with you?

A. I do have.

Q. May we see it?

A. May I have a ruling from the court whether it is satisfactory to show that?

Q. I think the court will tell you that you can show it.

The Court: I didn't hear any objection to it.

Mr. Buchalter: We have never seen it, Mr. Thorpe, and Mr. Ellis wanted to know whether or not—or he wanted the court to tell him to produce it.

Mr. Thorpe: What is the purpose of the statement?

Mr. Buchalter: I want to show it to Mr. Duval, to find [25] out whether or not that is the statement he saw. Mr. Duval has testified that, in August, he saw some figures and I would like to find out if those are the figures he saw. We have never seen this statement, either.

Mr. Thorpe: There will be no objection to it.

The Court: Very well. There is no objection.

The Witness: This is it.

Q. (By Mr. Buchalter): I show you this statement, Mr. Ellis, and will ask you whether or not this was made under your supervision.

(Testimony of Austin H. Ellis.)

A. It was.

Q. The bank overdraft, on August 31, 1947, was how much? A. \$3217.52.

Q. Do you have more than one copy of this?

A. No, sir.

Q. Is this the only copy that you have?

A. That is all.

Q. Will you please tell us, Mr. Ellis, from that statement, what the assets of that business were on August 31st?

A. In telling you what the assets were as of that date, that would have to be qualified the same as they were in our report.

Q. That is fine. You go right ahead.

Mr. Thorpe: If the court please, there has been a lot of [26] testimony about this statement and the witness has testified that it is the statement he did prepare at that time, and it would seem that the statement itself is the best evidence of what the financial situation of the bankrupt was on the date of the statement. And we would like to have the statement itself introduced.

Mr. Buchalter: I have no objection. As a matter of fact, I think it should be introduced.

The Court: Very well; it may be admitted.

The Clerk: Plaintiff's Exhibit No. 2.

[Printer's Note]: Plaintiff's Exhibit No. 2 is set out in full at page 15 of this printed Record.

Mr. Thorpe: It speaks for itself.

Q. (Mr. Buchalter): Would you go ahead,

(Testimony of Austin H. Ellis.)

then, Mr. Ellis, and give us the assets of that business?

A. The change fund at the stores was \$115; cash in branch bank, \$70.83; petty cash fund, \$1.82; inventory, \$31,287.08. "But the merchandise and supply inventory was taken by the manager and one assistant at each store, each signing for the accuracy of the count. A letter of instruction had been sent to each manager, giving adequate and complete instructions on taking the inventories. A copy of this letter is enclosed for noting. Also enclosed is a summary of inventory amounts by stores, which reflect a consistent amount in the various locations. There were two exceptions, where the manager only signed. The warehouse inventory was taken by the warehouseman and one assistant. Pricing and extension [27] was done in the main office by your employees. We test-checked these prices and extensions to the extent we deemed appropriate and found them in order." The next subject is furniture and fixtures. These were taken at book figures which had been recorded as of July 1, 1946, when Mrs. Jones took over this business as a single proprietorship.

Q. What was that figure, Mr. Ellis?

A. Net—well, the total is \$16,721.03, less depreciation of \$2600.90.

Q. That left \$14,120.13. Those are the fixtures themselves, are they not? A. That is right.

Q. And you did not know the actual value? That was just a book value? A. That is right.

(Testimony of Austin H. Ellis.)

Q. Now, will you give us the next item?

A. Leaseholds.

Q. How much was that amount?

A. \$5,675, less amortization of \$515.92.

Q. What is the next item?

A. Leasehold improvements.

Q. How much?

A. \$2583.54, less depreciation of leasehold improvements of \$129.18.

Q. Can you tell me the difference between leaseholds [28] and leasehold improvements?

A. Yes, sir.

Mr. Thorpe: If the court please, I am going to object to any further testimony as to the items in this balance sheet here. It seems to me that the balance sheet itself is the best evidence of what is set forth therein and it will either show that the business is solvent or insolvent on the balance sheet prepared by this witness.

Mr. Buchalter: If the court please, I think we have a right to show what some of these items are, such as the last item, and another item of \$2,000 and some odd dollars, leasehold improvements. If the court is going to study this sheet, we ought to know what these items are and what they are computed on and whether or not they have any value.

Mr. Thorpe: If the court please, counsel has stated that he is going to ask Mr. Duval if this is the balance sheet that he saw some time in August. I take it that the purpose is to show that the bank had some knowledge of the insolvency of the bank-

(Testimony of Austin H. Ellis.)

rupt when this balance sheet was presented to them. The balance sheet itself, I think, shows a net worth of the business of \$19,450.35. Is that correct?

The Witness: Yes, sir.

Mr. Thorpe: So the only purpose of the balance sheet in the trial is whether or not Mr. Duval, as agent of the bank, had knowledge that the bankrupt was insolvent at the time [29] this statement was presented to him. It doesn't seem to me it is material for any other purpose. The witness himself stated that he did see a statement and that it showed a net worth at that time. Here is the statement apparently, if it is the statement the witness saw. And the only purpose it would serve would be to show whether the business was solvent or insolvent. This accountant has prepared a statement and the figures are there in the statement and the statement is in evidence before the court.

Mr. Buchalter: If the court please, the law is well settled that we do not have to prove actual knowledge of insolvency. We only need to prove that there is reasonable cause to believe that the debtor was insolvent. There is quite a difference. This man has testified that this is the statement but that there were certain qualifications. We must assume at this particular moment that Mr. Duval, as the manager of this bank, knows how to read a statement. And, even though a statement may show \$1,000,000 net worth, it is very possible that the statement would indicate or show good-will items, such as I am now trying to ascertain, and as to the

(Testimony of Austin H. Ellis.)

actual value. And we contend that the statement is very important and we will tie it in to Mr. Duval.

Mr. Thorpe: If the statement is important, anything that the statement discloses is now in evidence before your Honor. And it must also be assumed that the court is quite [30] capable of reading the statement.

Mr. Buchalter: Yes, but the court would have no way of knowing what these items are, whether they are of any value whatsoever.

The Court: You may pursue it. Objection overruled.

Q. (By Mr. Buchalter): Do you remember the last question?

A. Yes, sir. If you should buy a store and pay \$7500 for it, and the equipment and the actual inventory would be worth \$1,500, and you are so anxious to get into that store from a money-making standpoint that you will still pay \$7500 for it, in order to buy the lease and get into it, and you paid \$6,000 for a leasehold, that is just an example.

Q. Therefore, this item on the balance sheet, leaseholds, \$5,675, with the \$515 depreciation, or a total of \$5,159.08, is exactly this example; that it is merely for the purchase of various leases of stores?

A. That is right.

Q. What is the other item of leasehold improvements?

A. If you put in fixtures and the like, that you cannot take out, they would have to be considered leasehold improvements.

(Testimony of Austin H. Ellis.)

Q. That doesn't include any permanent wave machines or equipment? [31] A. No, sir.

Q. These are repairs to the lessor's property?

A. That is right.

Q. And that totaled how much?

A. \$2583.54.

Q. Were there any other items?

A. We had deposits amounting to \$232.50.

Q. Mr. Ellis, can you tell us what the liabilities are?

A. As of August 31st, \$39,579.87. That, again, I wish to qualify, as I see here, "An extensive effort has been made to determine the extent of the liability of accounts payable. All bills found have been recorded and are reflected in the statements. We are advised that adjustments are due on some of these payables in the approximate amount of \$1100. These cover such claims as returned merchandise and so forth. From a conservative standpoint, we have not effected such adjustments on the records until documentary evidence is furnished to support the reduction of the liability. A schedule of accounts payable is enclosed."

Q. Will you please look at the accounts payable as such and tell us how much those were?

A. \$39,579.87.

Q. How much of that was trade accounts?

A. \$22,805.18. [32]

Q. Can you tell me whether or not any of that was delinquent? A. Not at this time.

Q. Do you mean you can't tell me or that it was not delinquent? A. I cannot tell you.

(Testimony of Austin H. Ellis.)

Q. There is also a large tax item there for various taxes, both to the State and the Federal Government, is there not? A. That is right.

Mr. Buchalter: No further questions.

Cross-Examination

Q. (By Mr. Thorpe): What is the date of that statement? A. August 31, 1947.

Q. You stated before, I believe, that it shows a net worth in the business?

A. That is right, sir.

Q. Of how much? A. \$19,450.35.

Q. When you speak of a net worth, do you mean that, after deducting the liabilities from the assets, the business was worth \$19,450.35, is that correct?

A. That would be true if the assets are considered in connection with the qualifications in the statement. [33]

Mr. Thorpe: That is all.

Mr. Buchalter: You may be excused, Mr. Ellis. Thank you.

The Witness: Do we get this back?

The Court: When a copy is substituted.

The Clerk: After appeal time expires, all exhibits are returned to the parties.

Mr. Buchalter: Mr. Ellis, do you have any objection if the court keeps this for a couple of months and then sends it back to you, or would you rather substitute a copy right away, in the next day or two?

The Witness: If these other statements are going to be photostated, why couldn't we photostat

(Testimony of Austin H. Ellis.)

this, too?

Mr. Buchalter: Is that the only record you have?

The Witness: That is right.

Mr. Buchalter: All right. We will photostat that also.

The Clerk: Is that agreeable?

The Court: Yes; that is agreeable.

Mr. Buchalter: Mrs. Jones.

ALVERA GORDON JONES

a witness for the plaintiff, being first duly sworn,
testified as follows:

The Clerk: Will you state your name, please?

The Witness: Alvera Gordon Jones. [34]

Direct Examination

Q. (By Mr. Buchalter): Mrs. Jones, you did business under the name of Gordon Beauty Salons?

A. Leroy Gordon Beauty Salons.

Q. That was your own business, was it not?

A. Yes.

Q. And some time in the early part of this year you were adjudicated a bankrupt by the Bankruptcy Court of this District? A. Yes.

Q. And Mr. Francis F. Quittner is the trustee in bankruptcy, is he not? A. Yes.

Q. In 1948, in January, you sold a store in San Bernardino, is that correct?

A. I sold a store in San Bernardino and I am not sure about it being January. I don't remember.

Q. How did you receive the deposit from that sale? In what form? Was it money, check, cash or what? Do you remember?

(Testimony of Alvera Gordon Jones.)

A. At this moment, I don't remember.

Q. Wasn't some \$1400 paid to you out of escrow upon that store?

A. I believe that was the amount. I can't remember, either. [35]

Mr. Buchalter: If the court please, I would like to have the record show at this time that, apparently, this witness is going to be an adverse witness. I would like to call her under the provisions of Section 21(j) of the Bankruptcy Act.

The Court: You may do so. That is the rule.

Q. (Mr. Buchalter): Isn't it true, Mrs. Jones, that Mr. Coryell gave you a cashier's check, for some \$1400, which you delivered to the Security-First National Bank?

A. I don't believe the cashier's check was for \$1400.

Q. How much was it for?

A. That I can't be positive of.

Q. Do you remember your testimony before Referee Brink?

A. No; I can't say that I do.

Q. Do you remember reading a transcript of the testimony just a few days ago? A. Yes.

Q. Do you remember reading this:

"Q. Do you remember the total purchase price on the San Bernardino store?

"A. In actual cash, I believe, it was either \$1600 or \$1700.

"Q. Of which \$1400 was paid out of escrow?

"A. That is right.

(Testimony of Alvera Gordon Jones.)

"Q. What did you do with the \$1400? [36]

"A. I paid a note at the Security-First National Bank.

"Q. Was that money deposited in the Leroy Gordon account first?

"A. No; I don't believe so.

"Q. Mr. Coryell gave you his check, isn't that correct?

"A. No. It was a cashier's check.

"Q. Did you take that cashier's check over to the Security-First National Bank?

"A. I believe I did because I paid them with a cashier's check."

Do you remember reading that?

A. Yes; I do remember it but I didn't remember what I had said in there, and at the time I didn't remember specifically.

Q. Does it refresh your recollection now?

A. Yes.

Q. Are those the facts?

A. Did I say in there that they were actual facts?

Q. Yes.

A. Because at that time I tried very hard to remember them, and at this point I don't recall that even they are correct. I would have to check on records to be positive that those are correct statements.

Q. Mrs. Jones, you did business with the Security Bank, did you not? [37]

A. Yes, sir.

(Testimony of Alvera Gordon Jones.)

Q. And, in January, 1947, you borrowed \$2,000 from them?

A. I borrowed \$2,000 from them and I don't recall the date.

Q. Was that before or after Mr. Duval became the manager?

A. I had a loan at one time that was paid off.

Q. We are talking about a \$2,000 loan.

A. Yes; I arranged for that, I believe, through Mr. Duval.

Q. Do you believe Mr. Duval made the first loan at the bank, this \$2,000 loan, which was subsequently paid with this money?

A. Yes; I believe so.

Q. Were you here when Mr. Duval testified before? A. Just the latter part of it.

Q. Did you hear him testify with reference to the original loan that was made by his predecessor? Did you hear that portion of his testimony?

A. I didn't listen that carefully. I had one loan from the bank I paid back.

Q. I understand. Was that also \$2,000?

A. I believe so.

Q. In April of 1947, April 30th, that note was renewed, [38] was it not?

A. It was renewed but I can't be sure of the date. I just can't recall it.

Q. You know it was renewed the first time it became due? Yes.

Q. And nothing had been paid on it?

A. No.

(Testimony of Alvera Gordon Jones.)

Q. Did you have a conversation with Mr. Duval at that time? A. Yes. [38a]

Q. What did you tell him?

A. I can't recall the exact words.

Q. You told him you couldn't pay the note, didn't you? A. Yes.

Q. You told him you didn't have the money, didn't you?

A. I suppose I did or I wouldn't be renewing it.

Q. And you also told him you would like to have it renewed, did you not?

A. Well, I must have from the standpoint that I did have it renewed, but I don't recall the conversation exactly with him.

Q. That note was again renewed, was it not?

A. I believe so.

Q. Those were 90-day renewals, were they not?

A. That I don't recall.

Q. You know it was renewed again whenever it became due? A. Yes.

Q. Now, Mr. Duval, testified that that renewal was on July 30, 1947, and he testified from the bank records. Would that give you any idea as to when it was renewed again?

A. Well, if the bank records show it, that would be the time. [39]

Q. Just before it was renewed, did you again have a conversation with Mr. Duval?

A. Yes; I must have.

Q. And what did you tell him?

A. Those conversations I don't recall. I don't recall them.

(Testimony of Alvera Gordon Jones.)

Q. Just recall it to the best of your recollection.

A. I truly can't remember.

Q. You also told him at that time you didn't have the money, didn't you? A. Yes.

Q. And you would like to have it renewed? The note, I am talking about.

A. Yes. Actually, I said I wanted the note renewed. As to whether or not I said I couldn't pay it or the circumstances were such that it was more advantageous to the business not to pay that note then, there is a difference there, and whether that was my conversation with Mr. Duval I don't recall.

Q. In any event, it was again extended, was it not? A. Yes.

Q. And it was extended to September 30th, for 60 days, isn't that true?

A. I don't recall the length of extension on those but I believe it was either two months or three months. [40]

Q. Mr. Duval testified it was extended to September 30, 1947. Do you believe that is correct?

A. Yes; I could assume that that was correct.

Q. About that time you went to see Mr. Duval with a new financial statement, didn't you?

A. At what time?

Q. At the time around September or August, some time in September. A. Yes.

Q. And you had with you a copy of a statement that Mr. Ellis had prepared for you, did you not?

A. Yes.

(Testimony of Alvera Gordon Jones.)

Q. I show you plaintiff's Exhibit 2, which is a copy of a statement made by Mr. Ellis, and ask you whether or not that is a copy of the statement that you had when you went to see Mr. Duval.

A. Yes; this is.

Q. And what was the conversation that you had with him at that time?

A. I requested a loan.

Q. And what did he say?

A. He said that he would take the record, the financial statement, and would check into it.

Q. And did you leave the statement with him?

A. I believe I did. [41]

Mr. Thorpe: What was that last answer?

(Answer read by reporter.)

Q. (By Mr. Buchalter): Did you have a conversation with him a day or two later with reference to his decision after he checked into it?

A. Yes.

Q. What did he say?

A. He said I wouldn't be able to have it.

Q. You say "it." Do you mean the loan?

A. That I wouldn't be able to get the loan.

Q. What else did he say, if anything?

A. I wanted an explanation.

Q. What did he say?

A. And I went to downtown Los Angeles.

Q. Let's, first, find out what else he had to say.

A. I don't believe at that time—I can't recall any conversation with Mr. Duval at that particular time.

Q. As a matter of fact, you told him you wanted

(Testimony of Alvera Gordon Jones.)

an explanation and he said he **couldn't make** the loan and, if you wanted to go to the downtown office, he would give you the name of a man to see, isn't that correct?

A. Yes; that is what he mentioned.

Q. On September 30, that note was again due and demand was made upon you for payment, was it not? A. Yes. [42]

Q. You didn't pay it then? A. No.

Q. Did you have any conversation with Mr. Duval, after you had returned from the downtown office, in which they told you they couldn't help you at the bank? A. Yes.

Q. That conversation was in the early part of December, was it not, 1947?

A. In regard to the loan?

Q. With regard to the renewal of the \$2,000 note.

A. In regard to the renewal? I, undoubtedly, went through the same explanation.

Q. Mrs. Jones, the note was not renewed on September 30th. The bank records indicate it was not renewed until December 6th and that you were delinquent from September 30th until it was renewed. In the meantime you had made a payment, on October 22, 1947, of \$250?

A. That is correct. Isn't it? Repeat that question, please.

Q. Is it true that you had made a payment of \$250 on October 22, 1947?

A. I don't recall the date. I, undoubtedly, made the payment.

(Testimony of Alvera Gordon Jones.)

Q. And another one for \$100 on October 31st?

A. Yes. [43]

Q. And \$150 on December 2nd, all in 1947?

A. That I don't remember, whether I did or not. I would have to look on the records to know that. I don't recall it. I haven't seen the records in about nine months.

Q. You do not also remember that this note was delinquent during this period of time and was not extended until December 6th, or that it was renewed, rather, on December 6th?

A. I don't recall whether it was renewed at that time but I was given an extension on that note.

Q. That means practically the same thing, Mrs. Jones. Was either one of those things done, renewed or extended? A. Yes.

Q. And that was for \$1,500, was it not, and, in the meantime, some \$500 had been paid down?

A. I can't say that is absolutely accurate.

Q. Didn't you have a conversation with Mr. Duval, in the early part of December, 1947, with reference to the unpaid balance on your note?

A. Yes.

Q. In which he told you he would have to have the renewal on the note and on a demand basis not to exceed 90 days?

A. Yes; I believe that is true.

Q. Did you have any conversation with him at that time [44] with reference to your financial difficulties?

A. I had a discussion with him at that time.

(Testimony of Alvera Gordon Jones.)

Q. What was the discussion?

A. I don't recall the exact discussion. If you could ask me what you would like to know about the discussion, I could answer it.

Q. Didn't you tell him you were having financial difficulties?

A. I may have said that but I can't remember exactly the wording.

Q. We don't expect you to remember the exact words. Let's have it in substance.

The Court: We will have to move along a little faster.

The Witness: I am sorry but I cannot recall the conversation.

Q. (By Mr. Buchalter): Let me refresh your memory again with reference to your testimony before Referee Brink:

"Q. Did you tell him you were having financial difficulties at that time?

"A. Yes; and he knew that anyway.

"Q. How did he know it?

"A. Because I hadn't been able to pay them the \$2,000 on the monthly basis."

Do you remember those questions and answers?

A. Would you read that again, please? [45]

Q. "Q. Did you tell him you were having financial difficulties at that time?

"A. Yes; and he knew that anyway.

"Q. How did he know it?

"A. Because I hadn't been able to pay them the \$2,000 on the monthly basis."

(Testimony of Alvera Gordon Jones.)

A. Yes; that must be right.

Q. "I would like to have you relate all the conversation you had with him in reference to your not being able to pay the loan.

"A. Well, I don't recall all the conversations just exactly but he knew I was struggling along because he had many, many times been of great assistance to me, and he had been doing that since July of 1946; so, he was well acquainted with the entire structure of the business; and, in fact, he is the gentleman to whom I took a financial statement in August."

Do you remember that question and answer?

A. Well, I know I took a financial statement to him.

Q. Do you remember reading this the other day?

A. Yes.

Q. Does that refresh your recollection?

A. No; it doesn't. At the time I gave that testimony, I was under stress and strain and I still don't recall those conversations. [46]

Q. Let me read further:

"Q. Did he know you were losing money right along? A. Yes.

"Q. Did you discuss that with him?

"A. Yes; and, in fact, he was the gentleman I went to see in regard to getting a loan and I was assured that with the paper I had with the figures that Mr. Ellis of Nielson & Ellis had prepared—not the actual financial statement, but in August some figures which the financial statement would

(Testimony of Alvera Gordon Jones.)

be based on—and I was assured at that time that they were sure I could get a substantial loan.”

Do you remember that?

A. And I said in there that Mr. Duval gave those statements?

Q. Yes.

A. If I gave those statements at that time, they are, undoubtedly, true. However, at this point I don't recall long conversations with him any more than this statement that is right here.

Q. Mrs. Jones, do you remember a conversation at the end of September, or some time in that part of the year, of 1947, in which Mr. Duval told you, “Well, start paying the note off at \$50 a week”?

A. I believe Mr. Duval said that I could make one payment of \$50 and I was to make another payment immediately, [47] and then it would have to be more at that time.

Q. In other words, he wanted you to pay it out on some type of weekly basis, isn't that correct?

A. I don't believe I had a weekly arrangement on that. I think I was to pay it as quickly as possible.

Q. Do you remember when that conversation took place?

A. No; I don't. That is the reason that I said I wasn't sure that the note was renewed; that it was extended. I was given time. But I cannot be positive of that.

Q. Let me refresh your recollection again, reading from your testimony before Referee Brink—

(Testimony of Alvera Gordon Jones.)

strike that for the moment. Did you have a conversation with him after you failed to make weekly payments? A. That I don't remember.

Q. Do you remember whether or not you were ever overdrawn? A. Yes; I was.

Q. You were overdrawn? A. Yes.

Q. Did you ever have a conversation with him, in November, 1948, when your overdraft was as high as \$5,000, with reference to your financial condition at the bank?

The Court: You say in 1948?

Mr. Buchalter: I meant 1947.

The Witness: I should judge that I had conversations [48] with him.

Q. Do you remember the conversations?

A. No; I don't. You see, I was in and out of the bank every day.

Q. Yes. And what was the conversation with reference to these notes and your financial condition, each and every day?

A. I didn't always stop to talk with Mr. Duval but he always asked me how the business was and I always said, "We are doing fine. We are getting along grand."

Q. Didn't you tell Mr. Duval that some of the stores were not making any money?

A. I may have said that at some time in some of our discussions, especially when Mr. Ellis had made his first audit.

Q. That is when they told you that they wouldn't lend you any more money? A. Yes.

(Testimony of Alvera Gordon Jones.)

Q. As a matter of fact, Mr. Duval was becoming quite insistent about the payment of this note, was he not, in November and December, 1947?

A. By "insistent" what do you mean?

Q. That he kept demanding the money and wanted to talk to you constantly about payment of that note.

A. That is awfully hard to answer. Naturally, he spoke [49] to me about the note. It had been renewed several times and he was concerned about it. But Mr. Duval was never ugly about it.

Q. Didn't you finally tell Mr. Duval that you were going to sell a store and that you would give him the money from the store?

A. I don't believe I did.

Q. Let me refresh your recollection from your testimony as given before Referee Brink:

"Q. Just before you paid them the \$1400 which Mr. Coryell paid you, did you tell them you were going to sell the store and give them the money?

"A. I told him that at the time I renewed the note; that is, I said that, if I could sell the store and when I did sell it, I would take care of the loan, and the understanding was that I would do so as quickly as I could."

Do you remember so testifying?

A. I believe that that was the substance of the conversation. However, I had been advised to sell stores earlier, much earlier than that. I believe you read that statement as saying "the store."

Q. "I said that, if I could sell the store."

A. I don't believe at the time I talked with Mr.

(Testimony of Alvera Gordon Jones.)

Duval I had a specific store in mind. I don't believe that I told him at the time of the renewal of any of those that [50] I would sell a store or any one of them for that purpose. It was understood that I would sell those stores——

Q. As quickly as you could?

A. Not just to dispose of them but to sell them wisely, to be able to take care of not only the obligation with the Security but with the creditors. And I believe the creditors understood that, too.

Q. All that took place when?

A. I believe that there was discussion on that—— will you repeat that question, please?

Q. When did that discussion take place?

A. In regard to what?

Q. The discussion with reference to selling stores for the purpose of paying the bank and other creditors.

A. Do you want me to answer as to a specific time?

Q. All times. If it took over a period of time, give us the period of time.

A. Well, all I know is that it was during the time I was attempting to work out a betterment of the situation, of disposing of the stores that were not paying and having that amount of capital to use for other purposes.

Q. That was in the latter part of 1947, was it not? A. Yes.

Q. In September, October, November and December, 1947, over a course of—or a period of time? [51]

(Testimony of Alvera Gordon Jones.)

A. It might have been as late as——

Q. January, 1947?

A. No. However, I think there was a discussion, I am not sure with Mr. Duval or with whom, but I know I contemplated selling the stores as early as August.

Q. Anyway, it was before you paid the bank the money? A. Yes.

Q. Do you remember a conversation with Mr. Duval at the time that they turned you down for the additional loan, in which you told Mr. Duval the conditions were becoming so serious that it might be necessary for you to go into receivership?

A. Is that the statement I made in there?

Q. Yes. Do you remember that conversation?

The Court: She is entitled to have the statement presented to her.

Mr. Buchalter: All right; I will read the statement.

The Court: Wait a minute. When you question witnesses as to their former testimony, they are entitled to have the document presented to them to look at, if they want it.

Q. (By Mr. Buchalter): In your testimony before Referee Brink—I will read you your testimony:

“Q. Did you have a conversation with Mr. Duval or with anybody else at the bank in which you said that conditions were becoming so serious that it might be necessary for you [52] to make an assignment for the benefit of your creditors?

(Testimony of Alvera Gordon Jones.)

"A. At the time they refused my loan, I told Mr. Duval then that I felt there was only one thing left for me to do, and I didn't know it was called assignment, but that I wanted to go into receivership; and he said I was very, very foolish to consider that.

"Q. When did that conversation take place?

"A. In September of 1947."

Do you now recall making that statement before Referee Brink?

A. No; I don't recall making that statement before Referee Brink, but, if I made that statement—this particular statement doesn't sound as if I could ever have made it.

The Court: I assume you are reading from the document of the Referee's Court?

Mr. Buchalter: Yes, Your Honor. I am reading from the reporter's transcript In the Matter of Alvera Gordon Jones, doing business as Leroy Gordon Beauty Salons, Bankrupt, No. 45,769, in the District Court of the United States, for the Southern District of California, Central Division, before the Honorable Benno M. Brink, Referee in Bankruptcy, as reported by E. B. Bowman, official reporter, 327 Federal Building, Los Angeles.

Q. Was anything said about receivership to Mr. Duval by you or by him? [53]

A. No; I don't believe so. May I say this? I was under the impression, due to the fact that I was not well, that I wanted to make some arrangement whereby the business could continue and I

(Testimony of Alvera Gordon Jones.)

would be able to have some time to myself that I could recover and come back into the business fresh, because I had worked very, very hard, and the only thing that I wanted to do was to have a couple or three months in which to do it, and I wanted the creditors to be taken care of. And, if I had a discussion in regard to receivership or assignment at that time, it was not with the thought of going into bankruptcy or complete failure.

Q. I understand that perfectly.

A. And, if I had a conversation with Mr. Duval as I said there, it was in that trend and not the fact that I had completely failed and the business was gone.

Q. I appreciate that fact. Now, I don't want to create the impression in your mind that you knew at that time you were going bankrupt. You knew, did you not, that your business was in severe financial difficulties and that you were looking for some plan to try to work it out so that the bank and all your creditors would have been paid in full? That is correct, isn't it?

A. Yes.

Q. And that is what you told Mr. Duval?

A. I told Mr. Duval I would like capital. [54]

Q. And you wanted capital to try to work out your situation, isn't that correct?

A. To better it.

Q. And didn't he tell you at that time that he couldn't help you any more; that the Security Bank couldn't give you any more money but perhaps some loan companies could help you?

(Testimony of Alvera Gordon Jones.)

A. Yes. They turned down the loan and I was given the names of loan companies, I believe, that I would be able to go to.

Q. The bank, as a result of your payments, was paid in full, was it not? The Security Bank had been paid in full? A. Yes.

Q. I show you—and Mr. Thorpe, with your permission, I would like to introduce these by reference only, because they are the records of Referee Brink—I would like to show you the schedules in bankruptcy, signed by you, and which are the records of Referee Brink, and ask you whether or not these are your signatures. A. Yes.

Q. I show you Summary of Debts and Assets and call your attention to debts of \$38,442.36. That is correct, is it not?

A. Do you mean correct on there?

Q. Yes. [55]

A. That is what it states there.

Q. On your original schedules? A. Yes.

Q. And assets totaling \$9,474.47, is that correct?

A. Yes. Now, these figures—this was made out—

Q. Indicating the liabilities?

A. Yes. To verify that figure, it requires the books.

Q. I understand it requires the books, but these are your schedules which you signed?

A. Yes; that is right.

Q. And your schedules indicate those figures, do they not? A. Yes.

(Testimony of Alvera Gordon Jones.)

Q. It shows unsecured claims of \$23,164.25, is that correct? A. Yes.

Q. These were all unsecured creditors?

A. Yes.

Q. Showing on Schedule A-3 of your bankruptcy schedule? A. Yes.

Q. Have any of these creditors received any money whatsoever? A. At that time? [56]

Q. No; at this time or at any time.

A. Any part of this amount?

Q. Yes. A. Not of this amount.

Q. Of the \$23,000?

A. No. But this was a heavier figure and these people were all paid, not every one of them, but a lot of those people were paid amounts during that period.

Q. But, finally, they wound up with these balances?

A. Yes; they wound up with these balances.

Q. So that there are certain creditors who received nothing?

A. By that statement, when you say they received nothing—I don't believe that is true because I believe there were checks written and there was money paid to various creditors.

Q. After your bankruptcy? A. Not after.

Q. We are talking about after your bankruptcy. Did they receive any money after you filed the petition in bankruptcy on March 26th?

A. I didn't file the petition.

Q. Who did?

(Testimony of Alvera Gordon Jones.)

A. I don't know. Somebody put me in it.

Q. But you finally filed these schedules which I have [57] just shown you?

A. Yes. But I did not place myself in bankruptcy.

Q. It was an involuntary petition that was filed? A. Yes.

Q. But you did file the schedules after you were ordered by the court to file schedules?

A. Yes.

Q. Did these unsecured creditors of some \$23,000 receive any money on their claims after that date? A. After I went into bankruptcy?

Q. Yes.

A. Well, I don't know. I don't know what the procedure is. I don't understand that. I mean could they be paid?

Mr. Buchalter: Mr. Thorpe, will you stipulate that they haven't been paid any money?

Mr. Thorpe: I will so stipulate. If you had asked me to do that in the first place, I would have done so. We haven't any dispute about that, I don't believe.

Mr. Buchalter: Will you also stipulate that in the Referee's file the order confirming sale indicates that Mr. Quittner, who was then the receiver, sold all of the assets of this bankrupt estate for the sum of \$5,100?

Mr. Thorpe: Is that the fact, counsel?

Mr. Buchalter: Here is the record right here.

Mr. Thorpe: All right, I will so stipulate if you represent [58] that is the fact.

(Testimony of Alvera Gordon Jones.)

Mr. Buchalter: Mr. Thorpe, the Referee's file also indicates that it has in its file an appointment, oath and report of appraiser, Mr. John O. Bodkin, whereby all of the assets of the bankrupt were appraised at \$9,930, so that we don't have to leave the file here.

Mr. Thorpe: Do you want me to stipulate that is the fact?

Mr. Buchalter: Yes; I want you to stipulate the file contains such a document.

Mr. Thorpe: On your representation that it does, counsel, I will so stipulate.

Mr. Buchalter: Thank you. I will return this file to the clerk from Mr. Brink's office.

Q. Your assets, in November and December, 1947, and January, 1948, were substantially the same, were they not, Mrs. Jones, as they were in March, 1948, especially March 26, 1948?

A. That is difficult to answer. I believe perhaps you are correct in that statement but I am not sure.

Q. The equipment was still there? It was the same equipment except for some minor changes that may have been made in various of the stores, is that right? A. Yes.

Q. And purchases that had been made, that hadn't depreciated [59] in that two-or three-month period, had they, substantially? A. No.

Mr. Buchalter: No further questions.

Cross-Examination

By Mr. Thorpe:

Q. Mrs. Jones, referring back to this statement

(Testimony of Alvera Gordon Jones.)

dated August 31, 1947, can you state to the court whether or not your assets, in December, 1947, and January, 1948, were substantially as those shown by this balance sheet? A. The assets?

Q. Yes, and liabilities of your company, of your shops, if they were substantially as shown by this balance sheet.

A. By December I had sold a few of the salons. So I would not show the figures that I have here.

Q. Did you reduce your liabilities from the proceeds of those sales?

A. I can't remember the figures, and I don't have them here, but it seems to me that they were reduced because now the figures that Mr. Buchalter just showed me were not the figures of this amount.

Q. What I am trying to get at——

A. However, the figures that he has might not have included all of these items. So it might have been substantially [60] the same.

Q. Mrs. Jones, did you ever have any conversation with Mr. Duval which would indicate to Mr. Duval that you were contemplating going into bankruptcy or that you were insolvent?

A. No.

Mr. Buchalter: That is—well, go ahead.

Q. (By Mr. Thorpe): Did Mr. Duval ever ask you if you were insolvent or how you were getting along in your business?

Mr. Buchalter: I want to object to the first part

(Testimony of Alvera Gordon Jones.)

of the question on the ground it calls for the conclusion of the witness.

Mr. Thorpe: The defendant here is charged with having knowledge of something——

The Court: Overruled. You have gone into this on both sides, as to what constitutes insolvency.

Mr. Thorpe: Will you repeat the question?

(Question read by reporter.)

The Witness: Well, that question, "How are you getting on in your business?" is an every-day question.

The Court: He is asking you, did he ask you that?

The Witness: It was answered in many various ways. When I came in specifically for anything, I would discuss the business but I never went into lengths as to what the problems were. Many times I said, "Business was slow" or "Business was up." What was the other part of your question that you asked? [61]

Q. (By Mr. Thorpe): Did you ever indicate in any way to Mr. Duval that your business was insolvent?

Mr. Buchalter: We object to that as calling for the conclusion of the witness.

The Court: Overruled.

Q. (By Mr. Thorpe): You may answer.

A. I don't believe I did. I don't recall placing the business on that basis.

Q. When you presented this statement, dated August 31, to Mr. Duval for an additional loan, you

(Testimony of Alvera Gordon Jones.)

wanted about \$12,000, did you not?

A. Yes; I believe that was the figure but I am not sure.

Q. Isn't it true that Mr. Duval told you that that amount was about what he could lend from the branch and that he would have to refer you to the head office?

A. Yes; I believe that is correct.

Q. And isn't it true that, when you went to the head office, the head office of the Security-Bank told you that they didn't like to make loans on beauty salons as such, and that that is the reason they referred you to a finance company?

Mr. Buchalter: To which we object on the ground that the question calls for the conclusion of the witness and is leading. [62]

The Court: This is cross-examination. Overruled.

Mr. Thorpe: Will you read the question, please, Mr. Reporter?

(Question read by reporter.)

The Witness: Yes.

Q. (By Mr. Thorpe): And the loan was not turned down then because of financial difficulties but it was turned down because of the type of loan that it was, wasn't it?

Mr. Buchalter: Just a moment. I submit that is strictly a conclusion, as to why the bank downtown turned down the loan.

The Court: She may state what was said between them and let the court decide that. Sustained. It is asking for a conclusion.

(Testimony of Alvera Gordon Jones.)

Q. (By Mr. Thorpe): Mrs. Jones, at the time you interviewed the head office of the bank for this loan, did they or did they not suggest to you that you were in such a financial position that you couldn't get a loan?

A. No; they didn't do that.

Q. They said, did they not, that it was a type of a loan that they did not make, and that they would suggest you go to a finance company, where you might get such a loan? Isn't that true?

A. It is awfully hard to say that that was just it. I know, after I had talked with the man at the branch, that I [63] was not perturbed by the fact that I could not get the loan. I mean his explanation was a satisfactory one and that I was told that I would be able to present such a loan elsewhere.

Q. When you went to the head office of the bank, did you present this statement, that has been introduced here as Plaintiff's Exhibit No. 2, to the head office? A. Yes.

Q. You had been overdrawn in your bank account, at the Melrose and Highland branch of the bank, many times prior to October, 1947, had you not? A. Yes.

Q. You had been overdrawn in the early part of the year, too, had you not? A. Yes.

Q. And the bank had every so often and rather frequently permitted you to overdraw for a few days, is that not correct? A. Yes.

Mr. Thorpe: I think that is all.

(Testimony of Alvera Gordon Jones.)

Mr. Buchalter: No further questions. The plaintiff rests.

The Court: You are excused.

Mr. Thorpe: If the court please, I wonder if I could ask that the witness be here this afternoon.

The Court: Yes. Be here this afternoon. They are not through with you. [64]

The Witness: All right.

Mr. Thorpe: It is 10 minutes to 12:00, your Honor——

The Court: Yes; we will recess until 2:00 o'clock.

(Thereupon, a recess was taken until 2:00 o'clock.) [65]

Los Angeles, California

Monday, November 8, 1948, 2:00 P.M.

Mr. Thorpe: Mr. Duval, will you take the stand, please?

ROBERT R. DUVAL,

a witness for the defendant, being heretofore duly sworn, being recalled, testified as follows:

The Clerk: You are Robert R. Duval?

The Witness: Yes, sir.

The Clerk: You have already been sworn, is that right?

The Witness: Yes, sir.

The Court: Are you calling him for further examination or what? Have both sides rested yet?

Mr. Buchalter: We rested.

Direct Examination

By Mr. Thorpe:

(Testimony of Robert R. Duval.)

Q. Mr. Duval, you testified this morning relative to some overdrafts on the account of Mrs. Jones. Would you explain to the court how those overdrafts usually arose?

A. Why, yes. Mrs. Jones had, I believe it was, 16 shops, in which she generally carried individual bank accounts wherever it might be convenient to that particular shop, and about once a week her managers would send in duplicate deposit tickets, showing how much she had deposited in these various bank accounts, and upon those deposit tickets she would draw a check which she would deposit into her main [66] account which was carried in my branch. Consequently, when she would sometimes inform me or show me how much she had on deposit in these other banks, we would be willing to go ahead and grant a temporary overdraft inasmuch as we knew this money was coming through to our account in our branch.

Q. Did Mrs. Jones ever discuss with you any financial difficulties?

A. Well, the only ones would be temporary difficulties in which she might need temporary working capital just for a temporary period; nothing outside of that.

Q. Did you ever have any conversation with her relative to whether her business was in a financially sound condition or otherwise?

A. No; I don't believe there was ever an occasion to discuss whether it was. I always felt it was.

Mr. Buchalter: If the court please, I move the answer be stricken after the word "No."

(Testimony of Robert R. Duval.)

Mr. Thorpe: I think the witness has a right to explain his answer, if the court please.

The Court: That is a conclusion, that he didn't think there was any occasion. He may state the facts which constitute that. I will sustain the motion to strike that part of it. Now he may explain what was done. Otherwise, he would be giving his opinion.

Mr. Thorpe: All right. [67]

Q. Will you state the facts, if any, relative to any conversation you ever had with Mrs. Jones concerning the state of her business?

Mr. Buchalter: To which we object on the ground he has answered there were none and, further, there has been no proper foundation laid.

The Court: He is speaking about a conversation between them. Overruled. He may answer.

The Witness: There never was any conversation in regard to whether she was in financial difficulties for the simple reason I didn't feel she ever was in financial difficulties.

Mr. Buchalter: I move "for the simple reason" and thereafter go out as a conclusion of this witness.

The Court: It may be stricken.

Q. (By Mr. Thorpe): I show you here, Mr. Duval, Plaintiff's Exhibit No. 2, and ask you if that is the financial statement or balance sheet which you testified to this morning as having been presented to you by Mrs. Jones.

A. That is; yes, sir.

(Testimony of Robert R. Duval.)

Q. Will you state to the court whether or not that is the last financial sheet or balance sheet showing the condition of Mrs. Jones' business that you ever saw?

A. That is correct; that is the last one I have ever seen.

Q. It is the last one you ever saw? [68]

A. Yes, sir.

Q. Did you know how many beauty salons Mrs. Jones operated, Mr. Duval? A. Yes, sir.

Q. How many did she operate? A. 16.

Q. Where were they located, generally?

A. They were located all over, more or less from Fresno down. I believe she had shops in Fresno, Santa Barbara, San Bernardino, and a number in Los Angeles. I don't remember all of the outlying cities.

Q. Would you explain to the court why the notes of Mrs. Jones were renewed these several times, as appears by the evidence this morning?

Mr. Buchalter: To which we object on the ground it calls for the conclusion of the witness.

Mr. Thorpe: I don't think so, if the court please.

The Court: Overruled.

The Witness: Well, it is more or less the policy of our bank that, although we may have an understanding with the customer we might extend them credit for a year's time, we, still, ordinarily write a note for 60 to 90 days, with the understanding that we would take a look at it at that time and, if we

(Testimony of Robert R. Duval.)

felt satisfied with their position, we would grant them an additional period of time on their note. [69]

Q. By Mr. Thorpe: Can you state to the court whether or not you would have renewed this loan of Mrs. Jones had you felt that she was unsound financially?

Mr. Buchalter: To which I object on the ground it is strictly a conclusion of the witness and incompetent, irrelevant and immaterial.

The Court: That calls for an opinion. Sustained.

The Witness: We would definitely not.

Q. By Mr. Thorpe: Just a minute, Mr. Duval. The Court sustained the objection. Will you state to the Court whether or not there was anything unusual about renewing this note for Mrs. Jones, and other than was customary in your business?

Mr. Buchalter: To which we object, again, your Honor, on the ground it calls for the conclusion of this witness as to what is unusual.

Mr. Thorpe: If the Court please, I think we can properly ask him what was customary in connection with the renewal of notes in the bank.

The Court: Overruled.

The Witness: I would say it was not particularly unusual. I have had that happen any number of times within the bank, to grant renewals when I felt that it was justified and a good reason for it.

Q. By Mr. Thorpe: What reason did you feel justified [70] you in making the renewals in this particular instance?

(Testimony of Robert R. Duval.)

Mr. Buchalter: That is objected to as calling for a conclusion and assuming facts not in evidence, that there was a reason.

Mr. Thorpe: If the Court please, the witness has just testified that he would renew notes when he felt it was justified. He must have had some reason here for renewing them.

The Court: Overruled.

Q. By Mr. Thorpe: Will you answer the question, Mr. Duval?

A. Well, the main reason was the fact that I had knowledge that Mrs. Jones was going to dispose of some of her stores, some of the outlying stores, and I felt, by disposing of those, she would have sufficient working capital and sufficient funds to pay us off when she found suitable buyers for the stores, which I felt she would have no trouble disposing of at a reasonable price.

Mr. Thorpe: I think that is all.

Cross Examination

Q. By Mr. Buchalter: As a matter of fact, Mrs. Jones did dispose of some of the outlying stores, did she not? A. I believe she did.

Q. Did she turn that money over to you or to your bank, rather? A. I couldn't say; no.

Q. Do you know that she sold some of the stores and didn't pay your loan, is that correct?

A. No, sir.

Q. Do you mean you don't know it is correct?

A. I do not know.

Q. You state that it was the policy of your bank to extend a note if there was an understand-

(Testimony of Robert R. Duval.)

ing that the debtor would have a year to pay, and then you would take a 60- or 90-day note, and then you would extend it if there was such an understanding? That is your testimony, is it not? A. Yes, sir.

Q. You didn't make this original loan, did you?

A. No, sir.

Q. You don't know whether or not there was such an understanding or not, do you?

A. I talked to the former manager regarding the matter before I renewed the note the first time.

Q. Is there any indication on the bank record, which you had this morning, as to whether or not this loan was to be for a year? A. No, sir.

Q. You say that it is a common practice and it is not unusual for the bank to give extensions and renewals? That is correct, is it?

A. That is correct. [72]

Q. But, where the debtor has repeatedly been in and discussed her inability to pay each time the note became due and has been running overdrafts, is that an unusual or a usual circumstance, within which the bank will extend a note?

A. It all depends on who the particular party might be. It is not always unusual.

Q. Do you recall your testimony this morning that, in November and December, 1947, there were no overdrafts of any kind? Do you remember that?

A. I believe I said in November there were no overdrafts. I don't believe I said December.

(Testimony of Robert R. Duval.)

Q. All right; let's take up the month of November. Will you tell us why there were not any overdrafts in November?

A. Probably because Mrs. Jones had sufficient—

Q. Wait a minute. We don't want your guessing and "probably" would indicate that you don't know. Now, if you know, answer it.

A. That there were sufficient funds in the bank so that there were no overdrafts.

Q. Isn't it true that you told her in October or the latter part of November that the bank would no longer honor any overdrafts?

A. I believe not, sir, inasmuch as we continued to [73] grant them at a later date.

Q. You continued to grant them at a later date?

A. In December, I believe, we have a record that we did.

Mr. Buchalter: That record wasn't produced this morning. Do you have that, Mr. Thorpe?

Mr. Thorpe: I believe so. Yes; they are here.

Mr. Buchalter: Were there any overdrafts in December?

Mr. Thorpe: Yes.

Mr. Buchalter: How much?

Mr. Thorpe: On December 8, there was \$541.72; on December 11, there was \$13. That is all that I see here, counsel.

Mr. Buchalter: Thank you.

Q. Now, isn't it true, Mr. Duval, that Mrs. Jones was told the bank would no longer honor any overdrafts?

A. No, sir.

(Testimony of Robert R. Duval.)

Q. When you looked at Plaintiff's Exhibit 2 in August, or in September, rather, of 1947, did you compare it with the statement which was in your file, dated March, 1947?

A. I don't remember, sir.

Q. Did you notice that the tax claims were as large if not larger than they were some six months before that? A. No, sir.

Q. Did you notice that the accounts payable were substantially [74] larger in this statement than they were in the previous statement?

A. I can't answer that question, sir; I don't remember.

Q. As a matter of fact, do you remember comparing the statements at all? A. No, sir.

Q. That statement was left with you or a copy of it?

A. Just for, I believe, one day or so.

Q. Now, you testified a few moments ago that the only conversations you had with Mrs. Jones were with reference to temporary difficulties. Can you tell me approximately when those conversations took place and what the substance of the conversations was?

A. I couldn't, sir. I had numerous conversations with Mrs. Jones from the time I became manager until approximately the time she requested this additional loan.

Q. And at that time she had a number of let us call them temporary difficulties that you discussed with her, is that right?

(Testimony of Robert R. Duval.)

A. I don't believe a number. The main thing we discussed probably was her loan or something like that.

Q. How did this question of temporary difficulties arise and how often?

A. Ordinarily, when she might want a temporary overdraft for a couple of days or so. [75]

Q. Do you know how many stores had been sold from August, 1947, until December, 1947?

A. No, sir.

Q. Do you know how many were finally sold at the time she went bankrupt? A. No, sir.

Q. Did you ever ask her whether she was selling any of the stores and, if so, what happened to the money? A. No, sir.

Mr. Buchalter: No further questions.

Mr. Thorpe: No further questions. The defendant rests.

Mr. Buchalter: No further evidence, your Honor.

The Court: Proceed with the arguments.

Mr. Buchalter: Your Honor, as you so well know, Section 60-a of the Bankruptcy Act defines as follows:

"A preference is a transfer, as defined in this Act, of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of the petition in bankruptcy, . . . which will enable such creditor to

obtain a greater percentage of his debt than some other creditor of the same class.”

Section 60(b) of the Bankruptcy Act states that “such preference may be avoided by the trustee if the creditor receiving [76] it or to be benefitted thereby or his agent acting with reference thereto has, at the time when the transfer is made, reasonable cause to believe that the debtor is insolvent.”

I believe that the issues were materially narrowed down by the pleadings. The defendant admitted by his answer the transfer of the property; that it was upon an antecedent debt to a creditor and that it was made four months before the petition in bankruptcy.

The only questions, then, to be decided, are the question of whether it enabled the creditor to receive a greater percentage than another creditor of the same class, whether the bankrupt was insolvent at the time, and whether or not the creditor had a reasonable cause to believe that the debtor was insolvent at the time of the transfer.

Your Honor, first, I would like to briefly discuss the testimony which was given. We have the testimony of Mr. Duval, the manager of the bank, to the effect that there was a loan which was in existence at the time he took over the managership of this branch and that it was renewed at various periods of time. And we shall show by a case cited later on this particular set of circumstances has been shown from which we can infer that the creditor had reasonable cause to believe or that he had knowledge of certain facts. Mr. Duval stated

that he couldn't make this loan and that Mrs. [77] Jones was sent to the main branch. He had been renewing these notes right along. She hadn't made payment even on a debt of \$2,000. She hadn't paid anything on this debt of \$2,000, and it is questionable why he even considered a loan of \$12,000. I mean why, under those circumstances, he even gave it any thought. It seems very illogical to even think of that. What he did was to send this particular person to the main branch. We contend, your Honor, and we submit for your consideration that he believed and he knew she wasn't going to get a loan, particularly when she had a loan in existence, at the bank and an unpaid note which she hadn't been able to pay in part. And we submit that was merely for the purpose of passing it on to a higher-up when he knew she would be refused, but didn't want to refuse her himself at the branch at which she was dealing. His own testimony was to the effect that he often honored overdrafts. He testified to that on direct examination under Section 21(j). He testified that *there* were many overdrafts. There is testimony to the effect that, in October, the overdrafts reached the amount of \$5,000. Then they stopped. And, in December, there was some testimony of a small overdraft. There was also testimony to the effect that the balance that he had, or that Mrs. Jones had, was approximately \$100 during the month of November, I believe it was. I think that that certainly put the creditor on notice that there was something [78] wrong, certainly. And he, certainly, must have known,

considering the fact that he knew that all deposits were handled through this branch, her liquid position. He didn't know the extent of her assets. He didn't know if the stores were worth \$1,000, \$2,000, \$3,000 or only \$500, but it was incumbent upon him as a bank manager and as a business man to inquire into that. As far as cash goes, he knew she couldn't make these payments. The records were right at his disposal. And he didn't inquire into any other facts. He also has testified that he never discussed the condition of her business or her financial affairs. It is very unusual for a bank manager of a bank, which was a creditor to the extent of \$2,000, never to even discuss her financial affairs and yet grant these renewals as they went along. There must have been some discussion and some reason why she wanted the renewals. She just certainly didn't go in and say, "I want a renewal," and he say, "That is all right." We submit, your Honor, that there was testimony and there was conversation to the effect that Mrs. Jones was in a very distressing financial condition and that there was no other thing for him to do but to keep on playing along with her, hoping she would be able to sell some of the stores and raise enough money at least to pay the bank. He wasn't interested in anything else but that \$2,000 note which the bank had taken from her and for which it had loaned her the money. He saw a balance sheet in August, [79] 1947. He didn't take a copy of it. He merely looked at it. He knew the situation after that because, in September and October, she had

overdrafts. So he knew she was in trouble there and, still, he didn't ask for a financial statement after that, or in December, when she made payments, or in January, when she made the bulk of the payment of \$1,450. There is testimony to the effect that he suggested that she sell some stores. Of course, that was the only way that he could get his money. That was the only possibility of him getting any money. He knew, her cash position being as it was, that she couldn't pay this note. So he had induced her in some way to sell these stores. He also testified he knew some of the stores were losing and, still, he didn't ask for a financial statement after August, 1947.

We submit, your Honor, that, if a creditor is negligent in any way or the policy of his business is such that he doesn't feel that it is necessary to get financial statements or that it is necessary to make further inquiry as to the debtor's affairs, that is not the consideration; that what must be considered is what he should have done as a reasonably prudent man.

In the case of *Canright vs. General Finance Corporation*, Eastern District of Illinois, 35 Fed. Supp. 841, the court states, "Defendant was charged with what it learned or should have learned as a reasonably prudent business man, through its [80] representatives in their three days' visit in Momence. Failure to investigate will afford no excuse when the creditor's knowledge and information are sufficient to have put an ordinary busi-

ness man on inquiry. It is not a question of actual belief. Rather, the test is the belief that ought reasonably to be entertained under the facts known—the inference which an ordinarily intelligent business man would draw from the facts which he would discover if he made inquiry. Defendant could not close its eyes to known or obvious facts, or to facts which it could have ascertained, by making the inquiry, of a reasonably prudent business man. It was bound to make real inquiry, that is, such an investigation as a reasonably prudent and honest business man would have made under the circumstances known.”

Here they are discussing a reasonably prudent business man. Here is more than a reasonably prudent business man. I think he is charged with a greater knowledge because he is a banker and it is a bank's business to make loans. And he should have certainly inquired when he saw this shaky state of affairs, and that is an understatement, I might say, that it was shaky.

In another case, *Buchanan State Bank vs. DeGroot*, 39 Fed. (2d) 397, the court stated, “The testimony shows that the bank had carried loans for Ross for some time, knew that a considerable part of his debt was due to an unprofitable [81] transaction in stock in a refrigerator company; that he had drawn checks without funds to meet them, and while he owned two confectionary stores, one in Buchanan and the other in Three Oaks, both were heavily encumbered, and in the second he had consistently lost the profits of the first. He

sold the one in Buchanan, but used none of the proceeds to reduce the bank loans.”

We have the same situation here. She sold the store and didn't reduce the loan.

“The bank knew that at least one creditor in substantial amount was unable to collect its claim against Ross. It was urging him to have a relative endorse its notes, and had secured a verbal statement of the bankrupt's debts. In addition to the \$3,000 real estate mortgage, there was also a chattel mortgage of \$2,800 on the Three Oaks store of which the bank knew, and the bankrupt had told the cashier that this store was costing all that the Buchanan store made. In short, it evidently knew all about the unpromising character of the bankrupt's business and his failing circumstances. The only circumstance of importance in the bank's favor is its release of Miller as endorser on the \$750 note. Before the referee no explanation was given of this, the cashier simply saying that Miller was responsible and they had released him ‘which perhaps we should not have done.’ The inference is open that this was either due to the willingness [82] of the bank to do a favor to his director, or to the unwillingness of Ross to turn over a \$3,000 mortgage to secure his debts unless his note to Miller was included; the chance that Ross would go into bankruptcy and the transaction be avoided as a preference.”

In the case of *Boston National Bank vs. Early*, 17 Fed. (2d) 691, which I think is a leading case, the court said, “The president of the bank knew

upon September 30, 1924, that the balances of the bankrupt were far below those required. The original loan had been carried for more than two years, the notes given for it being renewed from time to time, and upon this date the bank was unwilling to renew the note of \$3,500, which then fell due, without assurances that larger balances would be maintained by the bankrupt.

“The statement of the bankrupt’s account showed decreasing deposits after that date. Checks were held as overdrafts in order to secure payment of the note. These facts should have put creditors upon inquiry, which would have showed that the company was bankrupt.”

And we have many other cases, your Honor, which bear out that particular thought, that it is not the actual belief which a creditor has but it is what he should know, and, when he learns certain things which put him on inquiry, he is supposed to proceed further and it is incumbent upon him to proceed further and find out what is the actual situation with [83] that particular debtor, not just to allow it to ride, not to ask for financial statements or any other information.

As to the question of insolvency, your Honor, I submit the case of *Abdo, et al., vs. Townshend, et al.*, 282 Fed. 476, which states, briefly, evidence may be admitted as to the indebtedness of the bankrupt prior to the filing of the petition.

The Court: What was the indebtedness of the bankrupt at the time the petition was filed?

Mr. Buchalter: At the time the petition was filed?

The Court: Yes; in bankruptcy.

Mr. Buchalter: I believe it was \$39,000, your Honor.

The Court: What were the assets?

Mr. Buchalter: The assets, according to the appraisal, were \$9,900.

The Court: That consisted of these stores?

Mr. Buchalter: Yes; the fixtures of the business and the inventory of these stores.

Also, as to insolvency, the case of *Rosenberg vs. Semple*, 257 Fed. 72, states: "Insolvency may . . ., and in many cases must, be proved by proof of other facts, from which the ultimate fact of insolvency may be presumed or inferred."

Now, your Honor, I believe that the trustee has certainly borne any burden which he had to bear in this case; that he showed that the bankrupt was insolvent at the time; that he [84] showed that this particular creditor received a greater percentage of his debt than other creditors of the same class, and I think, beyond question, he showed that this particular creditor had a reasonable cause to believe that this debtor was insolvent. I think all of the facts point to that and we believe, your Honor, that the judgment should be for the plaintiff.

Mr. Thorpe: If the Court please, insolvency, within the meaning of the Bankruptcy Act here, is defined as follows:

"A person is deemed to be insolvent within the provisions of the Bankruptcy Act whenever the aggregate of his property, exclusive of any prop-

erty which he may have conveyed, transferred, concealed, removed or permitted to be concealed or removed, with intent to defraud, hinder or delay creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts."

If the Court please, there has been a financial statement or balance sheet submitted to the Court here in the evidence of the plaintiff, Plaintiff's Exhibit No. 2. It is said that that financial statement was presented, to an agent of the bank, either in August or September of 1947. That showed a net worth of nineteen thousand odd dollars. The evidence also shows that the bank never saw any later statement of the business of the bankrupt here. The only evidence that has been presented by the plaintiff as to whether or not [85] this bankrupt was actually insolvent at the time these transfers were made, or these payments were made to the bank, is the introduction of an appraisal in the bankruptcy proceeding itself. The bankruptcy proceedings were initiated, as shown by the complaint, on or about March 5, 1948. Therefore, it is submitted by the defendant here that there is no proof at all before this Court as to whether or not this bankrupt was actually insolvent, within the meaning of the Bankruptcy Act, at the time these payments were made.

It was incumbent upon the plaintiff to prove every element of a preference under the Bankruptcy Act and it is respectfully submitted to this Court that the plaintiff has failed to prove that the bankrupt was insolvent at the time these pay-

ments were made. That is the first position of this defendant.

The second position is that there is nothing in the evidence here to show that this defendant had knowledge of anything that would put a reasonable man upon inquiry to determine further facts. In August, defendant saw a financial statement showing a net worth of nineteen thousand odd dollars. The note was paid. The last payment was made to the defendant in January of the following year. It couldn't possibly have been more than five months later than then. It is true that the bank carried overdrafts for this bankrupt but the testimony before the Court shows that this was done frequently [86] and, also, shows why it was done. This bankrupt here maintained 16 shops and she did business with the bank closest to her at the time. Then she would subsequently transfer these funds to this account in the Melrose and Highland branch of the Security-First National Bank. We respectfully submit, your Honor, that there isn't anything here to put the bank upon inquiry which would require them to make any investigation. The plaintiff here certainly has not sustained the burden of proof in that respect, it seems to me. The cases on the subject even go so far as to say, even if one had a suspicion that a person was insolvent, they would still not be liable under the bankruptcy preference provisions.

The case of *McDougal vs. Central Union Conference Association*, reported in 110 Fed. (2d) at page 939, states, in part, as follows:

“Temporary failure of debtor to discharge his obligations promptly is not in itself sufficient to prove that creditor who is aware of such default has ‘reasonable cause to believe’ that it was intended to give preference by transfer to creditor.

“As respects provisions of the Bankruptcy Act making preference voidable if creditor has ‘reasonable cause to believe’ that preference will be effective, ‘reasonable cause to suspect’ does not have the same meaning as ‘reasonable cause to believe’ and the latter is not proved by circumstances [87] that would merely excite suspicion.”

Now, if the Court please, in the matter before the Court here, we respectfully submit that there is not even enough before the Court that would mean that anyone’s suspicion was excited, let alone reasonable cause to believe.

The case of *Lee vs. State Bank & Trust Co.*, reported in 38 Fed. (2d) 45, holds the same thing, that a mere suspicion that a bankrupt might be in trouble financially and might be insolvent within the meaning of the Bankruptcy Act is not sufficient to prove that it had reasonable cause to believe.

The cases cited by the plaintiff here assume, first, that the creditor who has been paid on an antecedent debt is already in possession of knowledge that makes his act practically a fraud on the other creditors. They assume that he already knew enough that would compel him to go further and learn more. But, surely, if the Court please, we don’t have that situation here. Nowhere in the evidence here is it said at all that the bank was

in possession of anything relative to the affairs of this bankrupt except that it did extend some overdrafts and they did talk about working capital and that two stores out of 16 were not doing well. We submit, if the Court please, that that is entirely insufficient to charge the defendant here with knowledge of anything that would put it upon inquiry.

The Court: What was the total amount of the indebtedness [88] of all the creditors, in January, 1948, when this payment was made to your bank?

Mr. Thorpe: There is no evidence before the Court on that subject, your Honor.

The Court: As adjudicated in the bankrupt Court, what was the total amount?

Mr. Thorpe: I think, as I recall, when the schedules were filed, the schedules listed some \$39,000, I believe.

The Court: That is now due the creditors?

Mr. Thorpe: Yes, your Honor. If I recall correctly, that is the figure.

The Court: Fourteen stores remained in the schedules at the time the petition was filed?

Mr. Buchalter: Nine were left, sold by the trustee in bankruptcy.

The Court: Is there any evidence as to what was the value of those nine?

Mr. Buchalter: Yes. It was \$9,900, as shown by the report of the appointed appraiser, Mr. Bodkin, of the Bankruptcy Court, and it was sold for \$5,100.

The Court: A \$39,000 indebtedness, is that right?

Mr. Buchalter: That is right.

Mr. Thorpe: If the Court please, I think I have covered the position of the defendant here and we will submit the matter to the Court. [89]

The Court: In January, 1948, when they claim this preference was granted to the bank, were these stores losing or gaining or holding their own?

Mr. Thorpe: I think they were operating in January, 1948.

The Court: How many of them were operating?

Mr. Thorpe: How many were operating, Mrs. Jones?

Mr. Buchalter: Nine.

Mrs. Jones: Nine. Well, I am not sure.

Mr. Buchalter: Nine were operating, your Honor.

Mrs. Jones: I am not sure about the number. Well, there were 10.

Mr. Buchalter: If the Court please, I would just like to make a few comments with reference to the argument of counsel. The financial statement, which is Plaintiff's Exhibit 2, introduced into evidence, we introduced for this purpose, your Honor. It shows on it a net worth of \$19,000 and it is upon that statement that the bank refused any further loans. We contend, as a result of the examination by Mr. Duval, they knew or should have known that this woman was insolvent for this reason, that they had a previous statement in March, 1947, and a comparison of the two statements distinctly shows that this woman, the bankrupt, had lost considerable money. In addition, none

of the liabilities had decreased substantially and, as a matter of fact, if anything, [90] some of them had increased.

With reference to that particular statement, we feel, your Honor, that it alone is sufficient to put a banker, who certainly should be a reasonable and prudent man, upon notice that something is wrong and, under the cases cited, they were bound to inquire.

With reference to the question of whether or not the plaintiff has proven insolvency, the bankrupt, herself, testified that there was no substantial change of any kind between her assets, that were surrendered to the receiver in bankruptcy, in March and December or January, a few months previous thereto; and those assets, as a matter of record, are before this Court having an appraised value of some ninety-seven or ninety-nine hundred dollars. And, if there wasn't any change in the value of those assets, and the debts are some \$39,000, I submit, your Honor, that it is an insolvent business within the meaning of the Bankruptcy Act. And, by the way, those assets were finally sold by the Bankruptcy Court for some \$5,100 and that \$5,100 must be used for the payment of fees and the expenses of administration and the payment of taxes, and there can be no question that the unsecured creditors are going to receive nothing. So that the unsecured creditors, which are in the same class as the Security Bank, are going to receive nothing, whereas the Security Bank received 100 per cent. [91]

I would like to call this further statement to your Honor's attention, as pointed out by counsel. He says that these overdrafts were just a situation which arose because of the fact that there was branch banking done and this woman would say, "I have got so much in this bank and that bank and allow my overdraft." Mr. Duval testified that these overdrafts had been running all through the year of 1947. I submit, your Honor, that it was impossible to have conducted that business any further without any further overdrafts and, in November, 1947, there was not one single overdraft and, in December, there were two, one of them for, I think, \$500, and one for \$13. The bank knew, in December and in November, that this account was very dangerous and, if they didn't know it, they certainly, in our opinion, should have known it.

The case of McDougal cited by Mr. Thorpe is a case in which the Court held that the mere fact that a man has a temporary inability, standing by itself, to pay a note, is not sufficient to come within the meaning of Sections 60(a) and (b) of the Bankruptcy Act. I don't quarrel with that law but in that case there was only temporary inability to pay. In this case it is not temporary. This note was made in January and there were three or four renewals, with a weekly payment plan which had failed, and all kinds of advice was given about selling stores and borrowing new money for capital.

The Court: In January, 1947, the note was made, was it?

Mr. Buchalter: In January, 1947, the original note was made.

The Court: And it ran a year before it was finally paid?

Mr. Buchalter: A year and a few days.

The Court: How was it paid?

Mr. Buchalter: The bankrupt had 16 stores, one of them in San Bernardino, and you will recall her testimony that she sold the store and received from a Mr. Coryell, who was the buyer in San Bernardino, a \$1400 cashier's check, outside of escrow; that she took that \$1400 check; didn't deposit it in her account, but she endorsed that check over to the Security Bank as a partial payment.

Mr. Duval was very frank and he says she had 16 stores and he told her to sell some of them. And, yet, your Honor, he never made it his business to find out, from August, 1947, to January, that some of the stores had been liquidated and sold because, in January, all she had left was 10 stores. One she sold in San Bernardino but concerning the other five or six stores he never even asked. I submit, your Honor, that, in my opinion, violates the law and that that gave them a duty. They were certainly under a duty to investigate the facts and then they would have known or certainly they would have had reasonable cause to believe that this debtor was insolvent. [93]

The laws have been becoming more liberal as time goes by. In 1938, when the Chandler Act was adopted, Section 60(b) was very much liberalized and, as a matter of fact, with the trend today, in my opinion, Section 60(b) will eventually be com-

pletely eliminated, so that it will not even be necessary to show reasonable cause.

The facts in this case, in my opinion, come squarely within the provisions of Sections 60(a) and 60(b) of the Bankruptcy Act.

This was, undoubtedly, in my opinion, a preference and a preference may be proven not by a specific showing of fact but may be proven by the surrounding circumstances. Otherwise, the Court can readily realize it would be practically impossible for a trustee in bankruptcy to show all of the facts.

The Court: Will you call my attention to those provisions of the Act again and read them?

Mr. Buchalter: Sections 60(a) and 60(b) of the Bankruptcy Act?

The Court: Read them if you have them there.

Mr. Buchalter: I am reading Section 60(a).

“A preference is a transfer, as defined in this Act, of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four [94] months before the filing by or against him of the petition in bankruptcy, or of the original petition under Chapter X, XI, XII or XIII of this Act, the effect of which transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class.”

The rest of the Section is of no effect here.

“(b) Any such preference may be avoided by the trustee if the creditor receiving it or to be

benefitted thereby or by his agent acting with reference thereto has, at the time when the transfer is made, reasonable cause to believe that the debtor is insolvent.”

I think that the plaintiff has definitely shown, together with the admissions in the pleadings, everything that comes within that Section and that, therefore, the judgment of this Court should be for the trustee in bankruptcy. [95]

The Court: You have here a case, which is nothing unusual under this Bankruptcy Act, which presents to the Court somewhat confusing circumstances as to the activity of the bankrupt and her creditors. I realize that the principle governing the proof rests upon the trustee, who claims a preference, to show that the creditor that he claims was preferred under the Act had knowledge or had reasonable grounds to believe that the bankrupt was insolvent at the time the preference was made and that it was made within the four months provided therein. The Court is confronted with that provision of law in analyzing the testimony, as to whether the evidence and circumstances warrant the conclusion that the preferred creditor had reason to believe during the existence of this indebtedness that the bankrupt was insolvent or unable to pay all of her creditors.

The purpose of the Act is, of course, that all creditors of a bankrupt, under that statute, shall be treated alike, that is, what is left of the bankrupt property shall be apportioned according to the per cent of their indebtedness. That is the purpose of the Act.

We have here a set of circumstances, where the bankrupt executed this note in question to the bank in January, 1947, and it existed as a debt until January, 1948, when it was finally paid in full by the bankrupt to the bank, which was within a few months of the bankruptcy proceedings and within [96] the four-month period mentioned in the Act. This indebtedness continued along during that year. It was renewed, in a sense, from time to time. And the bank had overdrafts during that time that were recognized and paid by the bank.

The bank, no doubt, as bankers do, had the right to keep advised as to the status of whoever owed it. They have the right and they do financially realize on their debts as soon as they can. But it seems that this bank went along during this year and was very kind and considerate of this bankrupt and continued such conduct until the payment of this note in January, 1948.

This bankrupt had a number of stores, starting out, I believe, with 16, and it gradually dwindled down to nine. The bankrupt disposed of those for the purpose, no doubt, of paying the bankrupt's indebtedness to her creditors, \$1400 of which was paid on this note. It seems to me, from all this testimony of the meetings and dealings of the bankrupt with the bank, that the bank, no doubt, had some information of the inability of the bankrupt to pay that note. It extended it from time to time and allowed overdrafts, realizing, no doubt, the financial condition of the bankrupt. Otherwise, that note would have been paid before that.

The rule seems to be, under this Act, that, if a preferred creditor has knowledge or has reason to believe that a bankrupt is insolvent, that Act steps in and it must be [97] placed in force. Did this bank have reason to believe that this bankrupt was insolvent by all of these transactions during that year, extending the note and overdrafts and carrying this bankrupt along in the business of some 16 stores, which dwindled down to nine? It is not fair to conclude that the bank didn't have an idea of what was going on as to her inability to pay this note during that time, when it kept extending it. Of course, they did. Bankers have to know and they have a right to know and it is their place to know. When you want to renew a note when it becomes due, the bank wants to know why it isn't paid or why you ask for an extension. They make the initial investigation. It is the bank's place to do it. They had reason to believe what the financial condition of this bankrupt was during that year from all of these transactions between the bankrupt and the bank. That is apparent. They had reason to believe that until the store was sold in January, 1948, and she paid up the balance to this bank and the other creditors took what was left. That is the situation. That is apparent and clear from this evidence. The bank was paid in full out of the sale of a store in January, 1948, which was a clear preference granted to that one creditor. I can't reason any other way. The other creditors took their chances and, as you say, they got nothing. The bank has been preferred. The pur-

pose of the Bankruptcy Act is to prevent a preference being granted to [98] creditors of equality.

To my mind, the evidence in this case presents a picture that the bank here had reason to believe that this bankrupt was, during that time, unable to pay until this one store was sold in January, 1948, and part of the proceeds was applied on that debt in preference to all the other creditors, creditors to the extent of some \$39,000. I can't reason any other way but that the prayer of this petition should be granted and a preference is declared.

From the proceedings before the Bankruptcy Court and the schedules and the dealings between the bankrupt and this bank, I can't reach any other conclusion than that the bank had an opportunity to reasonably believe that this bankrupt was unable to pay this debt until it was cleaned up, in January, 1948, by the sale of one store, and that that payment occurred within four months of the date of the filing of the petition in bankruptcy.

You may prepare findings and a decree in line with what the Court has expressed and in accordance with the prayer of the complaint. [99]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates speci-

fied therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 15th day of November, A. D., 1948.

/s/ ROSS REYNOLDS,
Official Reporter.

[Endorsed]: Filed Dec. 2, 1948.

[Endorsed]: No. 12147. United States Court of Appeals for the Ninth Circuit. Security-First National Bank of Los Angeles, a national banking association, Appellant, vs. Francis F. Quittner, as Trustee in Bankruptcy of the Estate of Alvera Gordon Jones, doing business as LeRoy Gordon Beauty Salons, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed January 8, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 12147

FRANCIS F. QUITTNER, as Trustee in Bankruptcy of the Estate of Alvera Gordon Jones, doing business as LeRoy Gordon Beauty Salons,

Plaintiff and Appellee,

vs.

SECURITY-FIRST NATIONAL BANK OF
LOS ANGELES, a National Banking Association,

Defendant and Appellant.

APPELLANT'S STATEMENT OF POINTS
UPON WHICH IT INTENDS TO RELY ON
APPEAL

To Paul P. O'Brien, Clerk of the above-entitled Court:

Comes now the above-named Appellant, and in connection with the above-entitled appeal hereby sets forth the points upon which it intends to rely on appeal:

1. That Plaintiff failed to sustain the burden of proof which was upon him to prove every element of a preference under the Bankruptcy Act.

2. That the evidence fails to sustain the finding that Defendant was in possession of sufficient facts concerning the bankrupt's business as would give it reasonable cause to believe that the bankrupt was insolvent.

3. That the evidence fails to sustain the finding that at the time of the payments to Defendant made by bankrupt the fair valuation of the aggregate of her property was not sufficient in amount to pay her debts.

The entire record as certified to you must be printed in its entirety as the above issues of law and fact are framed by the pleadings, evidence and judgment in that record.

Dated January 15, 1949.

/s/ ROANE THORPE,
Attorney for Defendant and Appellant.

[Endorsed]: Filed January 17, 1948. Paul P. O'Brien, Clerk.

